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Ensuring rights make real change

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Editorial

One of the major challenges militating against realising socio-economic rights in Africa is the issue of endemic corruption. Despite the fact that Africa is blessed with abundant natural and human resources it has not been able to improve the living conditions of its people. Poverty and unemployment and denial of access to housing and health-care services remain a great challenge.

By all standards Africa as a region is not poor but it does have bad leadership, economic mismanagement and endemic corruption. Indeed, many African leaders entrusted with the resources of their countries misappropriate or siphon them off into private bank accounts abroad. Although all the member states of the African Union have ratified the African Charter on Human and Peoples' Rights, which explicitly recognises socio-economic rights as justiciable rights, many African countries have not taken decisive steps towards realising these rights. Doing so requires governments' commitment to allocate resources. In addition, it requires the full participation of an empowered citizenry. Unless the citizenry have the necessary information about allocation and spending on socio-economic rights, it will be difficult to hold states accountable to their obligations under international and regional human rights law.

The focus of the two major articles in this third issue of the *ESR Review* for 2012 is on the issues raised above. Ebenezer Durojaye and Gladys Mirugi-Mukundi examine the impact of corruption on the enjoyment of the right to health in Africa and the obligations of African governments to address this situation. According to the authors, corruption can lead to poor allocation of resources to and within the health sector, lack of access to health-care services and loss of lives. They recommend that if African countries are to achieve the health-related Millennium Development Goals, then they must exhibit more political will to address. Ololade Shyllon discusses how access to information can enhance monitoring and accountability of states' commitments towards socio-economic rights in Africa. Citing examples from the region she examines the nexus between criminal law and access to information, particularly in the context of exposing corrupt practices in Africa. She recommends that decriminalisation of laws that impede access to information will go a long way in holding African governments accountable to their people. The case review by Jacinta Nyachae and Paul Ogendi is about a recent decision of the Kenyan High Court on the implications of the Anti-Counterfeit Act for access to essential medicines for people living with HIV. There are also summaries of recent developments on socio-economic rights across the world.

We hope you will find this issue enjoyable.

Ebenezer Durojaye
Editor

The implications of corruption for the enjoyment of the right to health in Africa

Ebeenzer Durojaye and Gladys Mirugi-Mukundi

Introduction

Corruption remains one of the biggest obstacles to development in many African countries. While there is no universally agreed definition of corruption, attempts have been made by scholars to explain what may constitute it. According to Bayley (1966), it can be defined as the 'misuse of authority as a result of consideration of personal gain, which need not be monetary'. Friedrich (1990) puts it thus:

> *Corruption may also arise where an individual who is granted power by society to perform certain public functions, undertakes, as a result of personal gain or reward, actions that may likely affect negatively the welfare of the society or even injure the public interest' (Fredrich 1990).*

The negative impact of corruption can be felt in nearly every facet of human endeavor. Corruption manifests in different forms in Africa, from embezzlement, bribery, money laundering and misappropriation of funds to outright stealing of public money. Indeed, the situation is so bad that corruption has almost become a way of life on the continent. While it is agreed that corruption is not peculiar to Africa, the truth remains, however, that Africa is the region that has exhibited the greatest tolerance to corrupt practices (Durojaye 2010).

Africa has often been deridingly referred to as the 'dark continent' due to its underdevelopment, particularly stark poverty and appalling health situation. While this appellation is contestable, the truth remains that Africa, when compared with other regions, has made the slowest progress in terms of addressing poverty and preventable diseases. In 2000, leaders from the international community, including Africa, adopted the Millennium Declaration, which culminated in the eight Millennium Development Goals (MDGs).

A number of these are crucial for Africa's development, including eradication of poverty, increase in school attendance for girls, reduction of infant mortality rate, reduction of maternal mortality by 75% and reversing the spread of HIV/AIDS.

Although no country is immune from corruption, however, its impact can be very devastating for a region such as Africa, which is already grappling with other challenges such as conflict, diseases and lack of infrastructure. It should be noted that Africa still bears the greatest burden of the HIV/AIDS pandemic, accounting for about 23 million out of the 34 million people said to be living with HIV worldwide (UNAIDS 2010). Generally, progress towards meeting the MDGs has been slow here and there are fears that many African countries may not achieve some of these goals. Corruption is one of the reasons why this is so (UN 2012).

This article examines the effects of corruption on the social and economic well-being of Africans. In particular, it examines the likely impact of corruption on the enjoyment of the right to health as guaranteed in international and regional human rights instruments. While it is noted that various actors, such as government officials, pharmaceutical companies, health providers and patients themselves, may be responsible for corruption in the health sector (Transparency International 2006), this article focusses on states' obligation to address it. It then assesses the effectiveness of measures taken by African governments and concludes that more still need to be done in order to eliminate the root causes of corruption in the region.

How rampant is corruption in Africa?

According to the 2010 report of Transparency International, Africa remains one of the most corrupt regions in the world. The report shows that six African countries are ranked among the ten most corrupt countries in the world: Somalia, Sudan, Chad, Burundi, Angola and Equatorial Guinea. Generally, countries are ranked on a 10-point scale with zero indicating the most corrupt countries, while six and above represent the least corrupt countries. Out of the 47 African countries ranked for 2010, about 44 of them scored less than five, indicating high degrees of corruption (Transparency International 2011). According to a 2002 study by Transparency International, corruption is said to have cost Africa a whopping US$ 150 billion per year (Hanson 2011). The situation is better appreciated when one considers that in 2008 the region only received US$ 22.5 billion in aid from developed countries (OECD 2009).

This clearly indicates that Africa does not need to rely on aid to address its myriad problems, but rather must pay more attention to the cankerworms known as corruption.

Hanson has noted that 'corruption in Africa ranges from high-level political graft on the scale of millions of dollars to low-level bribes to police officers or customs officials' (2011). Although political graft often imposes devastating financial costs on a country, the negative impact

> While African economies are merely surviving, African leaders taunt their people by displaying excessive opulence.

of petty bribes cannot be underestimated as they can have corrosive effects on the basic institutions and undermine public trust in the government. Africans have often had to pay bribes for services that were meant to be free. A 2009 East Africa Bribery Index compiled by Transparency International shows that over half of East Africans polled admitted to having paid bribes to access public services that would have been otherwise freely available (Transparency 2009).

While Africa's economies are merely surviving and on life support, African leaders continued to taunt their people by displaying excessive opulence. For many years Africa was known as the breeding ground for despots. It would seem now that the region is becoming a fertile breeding ground for corrupt leaders. The few who have shown what true leadership is (such as Julius Nyerere of Tanzania, Nelson Mandela of South Africa and Botswana's Festus Mogae) are the exception; considerable numbers of African leaders are enmeshed in corruption. Mobutu Sese-Seko deserves a special mention. He remains one of the world's most corrupt leaders ever, having embezzled a whopping US$ 5 billion between 1965 and 1979, when he ruled Zaire (now Democratic Republic of Congo (DRC)) (Infoplease 2011). On the list of the world's ten most corrupt leaders, he occupies third position. While he was busy looting his country's treasury, its economy and social development were paralysed.

Today, DRC remains one of the poorest countries in the region and social life is in disarray. The situation is exacerbated by the on-going internal conflict, which is characterised by the sexual abuse of women and the loss of lives. DRC used to be the pride of Central Africa but its2012 Human Development Index (HDI) is 0.286, which gives it the lowest ranking out of 187 countries with comparable data (UNDP 2012). Unemployment is rife and basic amenities in all facets of human endeavour are lacking. The living conditions of many citizens of DRC have plummeted, access to health-care services remains a great challenge and life expectancy has fallen to an all-time low of 48 years (UNDP 2012).

It should be noted that efforts have been made at the international and regional levels to address corruption through the adoption of the UN Convention against Corruption (2003) and the African Union's Convention on Preventing and Combating Corruption (2003). These two instruments urge governments to take appropriate measures, including enactment of laws and establishment of institutions or bodies, with a view to combating corruption. In addition, many African governments have enacted laws and established independent institutions or bodies to specifically deal with the issue of corruption. Despite these efforts, however, the challenge remains as a result of a lack of political will, political interference and weak judiciaries.

Nexus between corruption and the enjoyment of the right to health in Africa

In its 2006 report, Transparency International focusses on corruption in the health-care system. The report explains the different forms of corrupt practices that take place in the health-care system and how these affect the enjoyment of the right to health. It notes further that corruption in this sphere is likely to be less in a society where there is strict adherence to the rule of law, transparency and trust and where the public sector pays attention to codes and strong accountability mechanisms.

The report identifies two important factors as contributing to corruption in the health-care sytem: the involvement of private actors and the huge sums of money that are often allocated to this sector. Indeed, the report notes that about US$ 3.1 trillion is spent each year on health care.

The negative effects of corruption in any society are varied and may include perpetuating poverty and underdevelopment. Indeed it has been argued that 'deep-rooted corruption in Africa is one of the most serious developmental challenges facing the continent' (Kidane 2007). Corruption also undermines democratic governance. Corruption may be described as the interface of political and economic elites at the global, regional and national scale (Fraser-Molekete 2009). The former UN Secretary-General Kofi Annan (2003) noted the impact of corruption on development as follows:

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish ... Corruption hurts the poor disproportionately- by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aids and investment. Corruption is a key element in economic underperformance, and a major obstacle to poverty alleviation and development.

Deaths and injuries arising from many health challenges are preventable. However, the problems have persisted in Africa due to poor allocation or misappropriation of resources. It has been noted that endemic corruption can contribute to poor spending on the health-care sector, lack of access to medicines and high infant and maternal mortality rates (Transparency International 2006).

Both infant and maternal mortality rates are particularly high in Africa compared with worldwide trends. According to the World Health Organization (2004), about

3.7 million children died within the first 28 days in 2004, of which 98% were in developing countries, particularly in Africa. While the neonatal mortality rate in developed countries is put at 3 in every 1 000, the equivalent for West and Central Africa is 45 in every 1000 births.

Surviving pregnancy and childbirth also remains a great challenge. It is estimated that 99% of the annual 358 000 maternal deaths worldwide occur in developing countries, particularly Africa and Asia (WHO et al 2010). Indeed, Sub-Saharan Africa bears the greatest burden of maternal mortality worldwide, accounting for nearly three-fifths of all deaths. Here, the possibility of a woman dying during pregnancy or childbirth is 1 in 31 compared with 1 in 4 300 in developed regions (WHO et al 2010). In some countries, such as Chad and Somalia, the risk is even higher, at 1 in 14. For every woman who dies during pregnancy or childbirth, 20 more are likely to suffer from life-long injuries (WHO 2005).

The right to health is guaranteed in numerous international and regional human rights instruments. Notable among these are:

- article 12 of the International Covenant on Economic Social and Cultural Rights;
- article 12 of the Convention on Elimination of All Forms of Discrimination against Women;
- article 24 of the Convention on the Rights of the Child;
- article 16 of the African Charter on Human and Peoples' Rights; and
- article 14 of the Protocol to the African Charter on the Rights of Women.

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), the enjoyment of the right to health is dependent on other human rights, such as the rights to life, dignity, privacy and non-discrimination (CESCR 2000). Also, the right to health should be viewed as an inclusive right intersecting with other determinants of health such as potable water and sanitation, housing, nutritious food and access to health-related education and information. The CESCR reasons that the essential elements of the right to health include availability, accessibility, acceptability and quality. Although the CESCR does not clearly make the link between corruption and the right to health, it nonetheless explains that states have the obligation to judiciously utilise available resources to advance the right to health.

States' obligations in relation to the right to health

The CESCR has explained that the right to health, as guaranteed in numerous international and regional human rights instruments, requires governments to ensure that this right is respected, protected and fulfilled. Thus, African governments must ensure that their actions or omissions do not interfere with the enjoyment of the right to health. The obligation to respect the right to health requires African governments to ensure that they do not directly interfere with the enjoyment of the right. For instance, if non-availability of heath care services in the rural areas, due mainly to misallocation of resources or corrupt practices, leads to preventable losses of lives, then a state will be in breach of the obligation to respect the rights to health and life. A Transparency International report has shown that in countries where corruption is rampant, the poor and people who live in the rural areas tend to experience longer waiting times in public hospitals or when accessing other medical attention (Transparency International 2010). Further, if the absence of basic amenities in the health-care sector can be traced to acts of corruption or misappropriation of resources, then this amounts to a breach of the obligation to respect the right to health.

This obligation implies that the actions of a third party do not interfere with the enjoyment of this right. As a case in point, women and other disadvantaged people seeking treatment are frequently required by health-care providers to pay unauthorised fees before being attended to, as shown by studies in Zimbabwe, Rwanda and Nigeria. This amounts to a breach of the obligation to respect the right to health (Center for Reproductive Rights 2005; Center for Reproductive Rights and WARDC 20808). Such fees sometimes impede women's access to health-care services and therefore constitute a breach of these states' obligations.

The obligation to fulfill the right to health in the context of corruption implies that states must take positive steps, including administrative, legal, judicial and budgetary measures, to ensure the enjoyment of this right. A state must therefore enact appropriate laws and establish institutions or bodies to deal with corruption in general, and ensure that culprits of corrupt practices are appropriately dealt with. A government will be in breach of the obligation to fulfill the right to health if money earmarked for the procurements or supply of essential medicines, such as medicines for HIV/AIDS or tuberculosis, are embezzled or unaccounted for by government officials. For instance, the Global Fund was forced to suspend funds to Nigeria over allegations of embezzlement and mismanagement of earlier funds made available to the country (AVERT 2011). A similar incident has been reported in Mali, where half of the money meant to address tuberculosis and malaria was supposedly used for 'training events' (RIVERS 2012).

The major challenge to combating corruption in the region is the lack of political will. While many African countries have enacted laws and set up institutions to specifically address corruption, these measures have failed to yield positive results due to political interference, weak or compromised judiciaries or reluctance on the part of executives to prosecute 'high profile' culprits.

Conclusion

Africa continues to bear the brunt of the burden of deaths associated with HIV and childbirth. Money meant to address health challenges is often diverted into private accounts or even siphoned off to foreign banks. The ongoing loss of lives that is often due to a lack of access to basic health-care services is avoidable, but only if African governments take decisive steps to combat corruption in the

region. Efforts by African governments to combat corruption have not yielded positive results due to weak support institutions such as the judiciary, and a failure to punish culprits of corrupt practices. If African governments must meet the MDGs, particularly those that relate to health, then they must redouble their efforts at addressing the menace of corruption in the region.

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The link between socio-economic rights and the decriminalisation of laws that limit freedom of expression in Africa

Ololade Shyllon

Freedom of expression is recognised internationally as a cross-cutting right, one that is necessary for the enjoyment of all other human rights. The right to freely express one's views and opinion and to seek, receive and impart information and ideas is inextricably linked, in any society, to the ability of individuals to play a role in strengthening democracy and promoting good governance and respect for the rule of law. The right of freedom of expression, a critical component of which is a free media, goes a long way in ensuring greater enjoyment of socio-economic rights and a nation's overall development. The free exercise of this right is important in highlighting poor service delivery and exposing corruption, maladministration and mismanagement of public funds.

Nowhere more than in Africa is there urgent need for increased socio-economic development. The United Nations Development Programme (UNDP) Human Development Index of 2011, which measures socio-economic development based on health, education and standard of living, classifies 46 states as having the lowest human development in the world, of which 37 (80%) are in Sub-Saharan Africa. Likewise, almost 70% of countries classified by the United Nations Economic and Social Council's (ECOSOC's) as least-developed countries (33 out of 48) are in the same region. Least-developed countries are measured with reference to low income, poor human assets index (nutrition, health, education and adult literacy), and economic vulnerability.

A major contributing factor to the poor level of socio-economic development in Africa is endemic corruption, which continues to thrive, despite numerous national and continent-wide efforts to fight the scourge. While governments across the continent consistently sing in unison the need to fight corruption, and have adopted legal and institutional national frameworks and even a regional treaty to eradicate it (the African Union Convention of Preventing and Combating Corruption), most African states continue to retain and utilise criminal laws against those who, through the exercise of their right to freedom of expression, expose corruption and maladministration in government.

Use and impact of these laws

African countries have a plethora of laws criminalising freedom of expression. Examples include criminal defamation, criminal libel, sedition, insult to the President/Head of State and publication of false news. These laws, which are often relics of colonial times, have been retained and in some cases further toughened by post-colonial governments. Often the offences set out in the laws are vaguely worded, broadly formulated and attract lengthy prison sentences and/or heavy fines, thus making them a handy tool for states to use to arbitrarily curtail legitimate criticism by the media, politicians and ordinary citizens.

In Gambia, for example, the Criminal Code (Act No. 25 of 1933) was amended in 2004 and 2005 to impose heavier punishments for sedition. Fines from 50,000 Dalasi (US$ 2,500) to 250,000 Dalasi (US$ 12,500) can be imposed and/or imprisonment for a minimum of a year. The vague and broad formulation of this offence is reflected by the definition of sedition as:

> conspiring or publishing by spoken words or in print, any material with the intention to:
> a) bring into hatred or contempt or to excite disaffection against the person of the President, or the government of the Gambia as by law established; to excite the inhabitants of the Gambia to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Gambia as by law established;
> b) raise discontent or disaffection among the inhabitants of the Gambia; or
> c) promote feelings of ill-will and hostility between different classes on the population of the Gambia.

Several people have been convicted of sedition following these amendments. In July 2009, six journalists were convicted of sedition (and criminal defamation) for the publication of a Gambia Press Union statement that criticised comments made by the President in connection with the 2004 unsolved murder of Deyda Hydara, a journalist. They were each sentenced to two years and a fine of 200,000 Dalasi (US$ 10,000), with an additional two years' imprisonment if they failed to pay the fine. Again, in January 2012, three men – Modou Keita, Ebrima Jallow and Micheal Uche Thomas – were convicted of sedition and sentenced to three years imprisonment, with hard labour, for printing and distributing t-shirts proclaiming 'End to Dictatorship Now'. A fourth man, Amadou Janneh, was convicted of treason and sentenced to life in imprisonment for his involvement in the printing and distribution of the shirts.

> The use of laws that criminalise freedom of expression has continued unabated in most parts of Africa

Though the above illustrations do not reveal the application of sedition and similar laws in direct response to criticisms on socio-economic policies or conditions, the existence and frequent use of these laws in itself creates an atmosphere that 'chills' speech. The mere possibility of arrest, detention or prosecution is often a deterrent against voicing views that may be perceived as critical of government actions or policies. This prompts journalists and citizens at large to engage in self-censorship, which in turn impedes investigative reporting on corruption and other vices detrimental to socio-economic development.

In South Africa, for example, where laws against sedition, insult or publication of false news do not exist, and where criminal defamation though it exists in the law books was last applied in the 1953 case of *R v Mac Donald*, almost all scandals involving corruption and abuse of power have been exposed by the independent media. The conviction of former Police Commissioner Jackie Selebi and the dismissal of his successor, Bheki Cele, both for corruption, are clear examples of how the absence of offences such as sedition and false news emboldens the media to expose corruption, which often forces government to act decisively. Recent calls for the introduction of laws against insulting the President, though unlikely to be implemented, are thus worrying.

Of course, it must be recognised that the decriminalisation of these offences will not by itself automatically translate to improved socio-economic conditions. The mere ability of the citizenry to freely engage in public debate on socio-economic issues without a corresponding responsiveness by the government to public opinion on such issues certainly does little for socio-economic development.

This point is aptly illustrated by the case of Nigeria, where prosecution for offences such as sedition and criminal defamation is rare, but where public condemnation of allegations of corruption and mismanagement of resources by public officials, though routinely revealed in the media, has done little to stimulate government action to effectively tackle corruption. Despite the billions of dollars received in oil revenue giving Nigeria the position as the largest oil producer and exporter in Africa, the percentage of people living in poverty (on less than $1.25 a day) has steadily risen from 49% in 1990 to over 77% today. This has been attributed to corruption. Between 1960 and 1999, an estimated US$ 380 billion in oil revenue was lost to corruption in Nigeria.

Positive developments

The recognition by some African states and judiciaries that these offences are detrimental to the growth of open and democratic societies has led to their repeal in Cote d'ivoire, Ghana and Togo, and to declarations of unconstitutionality by courts in Uganda and Zimbabwe.

The Ghanaian government repealed the offences of criminal defamation, criminal libel and sedition in 2001, although the publication of false news remains a criminal offence.

In Togo, the offences of criminal defamation and insult were repealed in August 2004.

In Cote d'Ivoire, prison sentences for press related offences was abolished and replaced with (exorbitant) fines in December 2004.

In Uganda, the Supreme Court in *Onyango-Obbo and Mwenda v Attorney General* held in February 2004 that section 50 of the Criminal Code, which made 'publishing false news' an offence, was unconstitutional. The court unanimously held that 'given the important role of the media in democratic governance', a law which is capable of 'very wide applicability', thereby compelling self-censorship by the media, and that also gives state prosecutors the unfettered discretion to determine what constitutes a criminal offence, cannot be acceptable and is 'not justifiable in a free and democratic society'.

Again, in August 2010, the Court of Appeal of Uganda, sitting as the Constitutional Court, held in *Andrew Mwenda and Another v Attorney General* that the offence of sedition in sections 39 and 40 of the Criminal Code was unconstitutional as it was 'so vague' and 'so wide' that 'it catches everybody to the extent that it incriminates a person in the enjoyment of one's right of expression of thought'.

These positive examples of executive and judicial activism regarding the importance of free speech are, however, few and far between, and the use of laws that criminalise freedom of expression has continued unabated in most parts of Africa. This has become a source of concern to advocates of freedom of expression on the continent.

In Uganda decisions nullifying the offence of publication of false news have been 'accepted' by the executive but in Zimbabwe, the executive determined to retain the offence on the statute books. In May 2000, the Supreme Court in *Chavunduka and Choto v Minister of Home Affairs & Attorney General* held that the offence of publishing false news under the Law and Order (Maintenance) Act, was unconstitutional, as it was too vague and could not be said to be 'necessary in a democratic society'.

Two years later, the government introduced a similar offence into the Access to Information and Protection of Privacy Act (AIPPA), which was subsequently also declared unconstitutional by the Supreme Court. Unrelenting, the government amended the offending section by narrowing its scope. Thus, the offence of publication of false news continues to exist in Zimbabwe, albeit with restricted applicability.

Efforts at decriminalisation in Africa

Over the last five years, efforts towards the decriminalisation of these offences by regional and international non-governmental organisations working on media freedom has steadily gathered momentum. Perhaps the most prominent of these efforts was the adoption of the Declaration of Table Mountain (DTM) in June 2007, by the World Association of Newspapers and News Publishers (WAN-IFRA) in Cape Town, South Africa. This calls on African states 'to abolish insult and criminal defamation laws' and to 'review and abolish all other laws that restrict press freedom'. The DTM has since been endorsed by President Issoufou of Niger on 30 November 2011 and by Liberian President, Ellen Johnson-Sirleaf, on 21 July 2012.

At the regional level, the African Commission on Human and Peoples' Rights (African Commission) has been at the forefront of encouraging states to repeal criminal defamation, insult laws and all other criminal laws that restrict freedom of expression. Principle 12 of the Declaration of Principles on Freedom of Expression in Africa (the Declaration), adopted by the African Commission to elaborate the scope and content of freedom of expression in article 9 of the African Charter, stipulates that individuals must not be found 'liable for true statements, opinions or statements regarding public figures, which it was reasonable to make in the circumstances'. More importantly, public figures are 'required to tolerate a greater degree of criticism'.

In *Kenneth Good v Botswana*, the African Commission emphasised the importance of freedom of expression in a democratic society, stating that in an open and democratic society, dissenting views 'must be allowed to flourish'. Reiterating principle 12 of the Declaration requiring public figures to be tolerant of criticism, the African Commission stated that a high level of tolerance is expected when political views are expressed and 'an even higher threshold is required when it is directed towards the government and government officials'.

On her part, the Special Rapporteur on Freedom of Expression and Access to Information in Africa, Commissioner Pansy Tlakula, has in line with her mandate consistently appealed to states to decriminalise media offences. She has done so through her Activity Reports, presented to each Ordinary Session of the African Commission, as well as through numerous letters of appeal sent to heads of states, expressing concerns on the application of these laws. The Special Rapporteur also spearheaded the adoption by the African Commission of Resolution 169 on Repealing Criminal Defamation Laws in Africa, which called on states parties to the African Charter to repeal criminal defamation and insult laws that impede free speech, and to adhere to freedom of expression standards as guaranteed by regional and international instruments.

At the 52nd Ordinary Session of the African Commission held in October 2012 in Cote d'Ivoire, the Special Rapporteur announced the launch of a pan-African campaign for the decriminalisation of laws that restrict freedom of expression, to be implemented under her leadership. As part of this this campaign, multi-country research into the effect of laws criminalising freedom of expression will be commissioned, to provide a solid evidence base of the effects of these laws on freedom of expression. It is expected that the outcomes of this research will inform the work of the Special Rapporteur in the exercise of her mandate. Simultaneously, efforts will be made to engage directly with states parties through a combination of high-level advocacy visits and strategic litigation before national, sub-regional and regional courts, with a view to securing the repeal of criminal laws that restrict freedom of expression, in favour of civil laws.

Conclusion

There is growing acceptance internationally that the repeal of offences such as defamation and libel in favour of the institution of civil proceedings, culminating in the award of proportional fines, is in consonance with international human rights standards. This has resulted in countries such as the United Kingdom, Ireland, Argentina, Mexico and Sri Linka repealing such laws. Unfortunately, this recognition is yet to take hold in Africa, where the continued existence and application of criminal laws to limit freedom of expression negatively impacts on not only the enjoyment of all other human rights, but also on the ability of African states to build a democratic culture and foster transparency, accountability and socio-economic development.

While the decriminalisation of these laws is not in itself capable of singlehandedly resolving all of Africa's socio-economic development issues, it would certainly go a long way in creating a conducive atmosphere for African governments to be held accountable for their acts or omissions, insofar as it relates to the exercise of the powers with which they have been entrusted by the people.

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Promoting cooperation between the United Nations and African human rights systems

The role of civil society organisations and other monitoring institutions including national human rights institutions

Ebenezer Durojaye, Gladys Mirugi-Mukundi, Boris-Ephrem Tchoumavi

During the NGO Forum preceding the 52nd Ordinary Session of the African Commission on Human and Peoples Rights, held in Yamoussoro, Cote d'Ivoire, in October 2012, the Community Law Centre (CLC), University of the Western Cape, in conjunction with the United Nations Office of the High Commissioner for Human Rights (OHCHR) held a seminar on the Special Procedures of the United Nations Human Rights Council.

Background

Since its inception in 1945, the UN has remained the custodian of individual and collective human rights all over the world. In 1948 the Universal Declaration of Human Rights (UDHR) was adopted, as have several other human rights instruments since then, to ensure the promotion and protection of human rights irrespective of the gender, race, ethnicity, economic background or religious beliefs of rights holders. In addition to adopting human rights instruments, the UN has made a great effort to strengthen the promotion and protection of human rights through its human rights mechanisms. One of these is the establishment of Special Procedures by the UN Human Rights Council (HRC). Special Procedures are typically independent experts in charge of monitoring human rights developments, either on a given theme or in a given country. There are currently 48 Special Procedures, of which 36 are thematic and 12 are country-based.

The Special Rapporteurs have continued to play an important role in the advancement of human rights all over the world. Apart from conducting research on certain thematic issues, they conduct country visits on invitation by governments. Special Procedures mechanisms may also take action on individual or group cases of alleged human rights violations, as well as bringing legislation and policies that may potentially affect the human rights of those within their jurisdiction to governments' attention.

Since the establishment of the first thematic Special Procedure in February 1980 – the Working Group on Enforced or Involuntary Disappearances – these mechanisms have become an important part of the UN human rights system. Today there are 48 Special Procedures under the human rights system.

Recently, regional human rights bodies such as the Af-

rican Commission on Human and Peoples' Rights (African Commission) have established special mechanisms similar to those of the UN HRC to strengthen the protection and promotion of human rights at the regional level. Although it is one of the youngest of all the regional human rights systems, the African one has made great progress in the promotion and protection of human rights across the continent.

The African Commission is the body responsible for monitoring the implementation of the African Charter on Human and Peoples' Rights. While it encountered some problems at its formative stage, it has turned out to be bulwark of human rights protection in Africa. Apart from developing progressive jurisprudence to advance both civil-political and socio-economic rights, the African Commission has similarly established special mechanisms to strengthen the promotion and protection of human rights in Africa with a particular focus on specific thematic issues.

The first of these mechanisms, the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions in Africa, was appointed as far back as 1994, but has been dormant over the last few years. Today there are about 17 Special Procedures of the African Commission. There has been little opportunity for the UN and the African Commission to strengthen partnerships and build on each other's work. Given the long experience of the UN human rights system, and the specific expertise of the African system, there are some benefits they can derive from working with each other.

In January 2012 the Special Procedures mechanisms of the two systems agreed on a roadmap aimed at strengthening cooperation and coordination between them. Called the Addis Roadmap (as it was developed and agreed upon during a consultation between Special Procedures mandate holders from both systems in Addis Ababa), it identified concrete actions and initiatives with the view of enhancing synergies. One relates to encouraging civil society organisations to support and promote the partnership between the two systems. The following ways in which NGOs can interact with Special Procedures were identified:

- sending information on human rights violations which have occurred, or may occur, which the relevant Special Rapporteur then communicates to government in the form of an allegation letter (on past violations) or urgent appeal (concerning future violations);
- contributing information to the reports of the Special Rapporteurs;
- lobbying government to invite Special Rapporteurs; and
- meeting with Special Rapporteurs during their country visits.

> The African Commission has turned out to be a bulwark of human rights protection in Africa.

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For more information on the Special Procedures Mechanisms of the UN Human Rights Council, see:
http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx
http://www.ohchr.org/EN/News-Events/Pages/DisplayNews.aspx?NewsID=11765&LangID=E

Anti-counterfeiting and access to generic medicines in Kenya

Reviewing *Patricia Osero Ochieng & 2 Others v Attorney General* (2012)

Jacinta Nyachae and Paul Ogendi

On April 20, 2012, the Kenyan High Court delivered a ground-breaking decision that will, inter alia, enhance national, regional and international efforts aimed at improving access to affordable and essential medicines, including generics for people living with HIV. Indeed, the Patricia Ochieng case has been described as 'precedent-setting' and a 'trail-blazer' by both activists and academicians insofar as access to generic medicines is concerned in the context of anti-counterfeiting legislations.

The decision by the Kenyan government not to appeal the court's ruling means that the judgment is legally binding, particularly with regard to the state's obligations to ensure access to medicines in line with the rights to life, health and human dignity guaranteed in the Bill of Rights of the Kenyan Constitution of 2010.

A brief history of the case

Kenya enacted the Anti-Counterfeit Act No.13 of 2008 to combat counterfeit trade. The Act came into effect in 2009 and also established the Kenyan Anti-Counterfeiting Agency, which came into operation in 2010. The Act, which is aimed at aimed at deterring the illegal trade, established what constitutes counterfeiting offences and lists their penalties.

Interestingly, the petitioners in this case made it clear that they support the fight against counterfeiting in Kenya. However, they argued, sections 2, 32 and 34 of the Act were of concern. Their main concern was the ambiguity in the definition of 'counterfeiting' under section 2. In their opinion, it provides sufficient room for abuse by both over-zealous intellectual property rights owners and enforcement officers, exercising their statutory powers, to restrict access to essential and affordable medicines including generics. Similarly, section 32, which creates counterfeit offences, potentially criminalises generic manufacturing and importation. Section 34 on the powers of the Kenya Revenue Authority (KRA) Commissioner could also be exploited to seize and detain generics.

On July 8, 2009, three petitioners living positively with HIV approached the court to challenge the above controversial provisions. According to their petition, sections 2, 32 and 34 of the Anti-Counterfeit Act if implemented were likely to infringe on their constitutional rights. The original petition was later amended to conform to the provisions of the new Constitution of Kenya enacted in 27 August 2010, which expanded the list of justiciable rights to include economic, social and cultural (ESC) rights, such as the right to health that buttressed the petitioners' case. These ESC rights include the right to life, to dignity and to health in terms of Articles 26(1), 28 and 43(1) of the 2010 Constitution. The petitioners' core argument in this regard was that access to essential medicines formed part of these rights, which, if restricted, would amount to a constitutional breach. They urged the court to protect their rights from this breach using evidence collected nationally and internationally.

The petitioners were later joined in their petition by the AIDS Law Project (ALP) as interested party and Mr. Anand Grover, the UN Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health (the Special Rapporteur), as *amicus curiae*. The arguments of the interested party and *amicus curiae* served to support and further strengthen the position taken by the petitioners by emphasising the legal interpretation and adduction of relevant data before the court.

On April 2010, Justice Wendoh granted temporary orders to suspend the application of sections 2, 32 and 34 of the Anti-Counterfeit Act with regard to generic medicines. A final judgment was delivered by the High Court Judge, Justice Mumbi Ngugi, in 2012.

The petition

In their petition, Patricia Asero Ochieng, Maurine Atieno and Joseph Munyi sought the following prayers:

- A declaration that the fundamental right to life, human dignity and health as protected and envisaged by Article 26(1), 28 and 43 of the Kenyan Constitution encompasses access to affordable and essential drugs and medicines.
- A declaration that, insofar as the Anti-Counterfeit Act severely limits access to affordable and essential drugs and medicines for HIV and AIDS, it infringes on petitioners right to life, human dignity and health guaranteed under Articles 26(1), 28 and 43.
- A declaration that enforcement of the Anti-Counterfeit Act insofar as it affects access to affordable and essential drugs and medications, particularly generic drugs, is a breach of the petitioners' right to life, human dignity and health guaranteed under the Kenyan Constitution.

> Violations of the right to health cannot be justified on the basis of intellectual property rights protection

In simple terms, the petitioners were essentially asking for three things: first, they wanted the Judge to declare access to medicines as being part and parcel of the constitutional right to health, human dignity and life. Second, they wanted the Judge to declare the provisions of the Anti-Counterfeit Act unconstitutional insofar as they limit access to essential drugs. Finally, they wanted the Judge to declare as unconstitutional the enforcement of the legislation in a manner that will affect access.

All these prayers were granted by the Judge as follows:

- The fundamental right to life, human dignity and health as protected and envisaged by Articles 26(1), 28 and 43(1) of the Constitution encompasses access to affordable and essential drugs and medicines including generic drugs and medicines.
- Insofar as the Anti-Counterfeit Act severely limits or threatens to limit access to affordable and essential drugs and medicines for HIV and AIDS, it infringes on the petitioners' right to life, human dignity and health guaranteed under Articles 26(1), 28 and 43(1) of the Constitution.
- Enforcement of the Anti-Counterfeit Act insofar as it affects access to affordable and essential drugs and medication, particularly generic drugs, is a breach of the petitioners' right to life, human dignity and health guaranteed under the Constitution.

Petitioners' arguments

To begin with, the three petitioners were persons living with HIV and were dependent on generic medications. Therefore, their arguments were based on real-life experiences devoid of academic theory or legal jargon. Their main argument was that access to generic ARVs had 'normalised' their lives and therefore if access was restricted in any way they would die of opportunistic infections and/or develop resistance to the drugs they were taking. Either way, the results were undesirable for the government under national and international laws.

On the other hand, the interested party, ALP, relied heavily on the provisions of the new Constitution of 2010 in submitting its arguments. The crux of ALP's argument was that the relevant legislation in its current form infringed on the right to life (Article 26(1)), the right to dignity (Article 28) and the right to health (Article 43(1)) for persons living with HIV and AIDS. In addition, the ALP also argued that the legislation could potentially violate Article 45(1) of the Constitution on the protection of family life. This was innovative since the HIV and AIDS scourge has been a major cause of havoc in family life, with many households in Kenya headed by eldest children and/or grandmothers. On the rights of the child, the ALP noted that Article 53(2) of the Constitution guaranteed the right to basic health-care services. They argued that the government relies heavily on generic medicines for its public health programmes because they are more affordable than branded medicines.

The *amicus curiae*, the Special Rapporteur, argued that access to needed medicines is an essential element of the right to health protected under international instruments ratified by Kenya. In his submissions, he reiterated that the definition of counterfeiting under section 2 'would certainly encompass generic medicines produced in Kenya and elsewhere'.

The biggest challenge thus remains the confusion between generic drugs and the violation of intellectual property rights. Access to generic drugs is likely to be affected on the pretext of protecting intellectual property rights. Due to the high pricing of branded medicines, the poor will be discriminated in accessing essential medicines. This will lead to a violation of the right to health which cannot be justified on the basis of intellectual property rights protection.

Respondent's argument

The respondent's arguments on behalf of the state are summarised below.

- Generic medicine is not synonymous with counterfeit drugs; section 2 of the Anti-Counterfeit Act targeted only the latter.
- The definition of counterfeiting is 'clear and specific' and not ambiguous and therefore, contrary to the allegations proffered by the petitioners, it cannot be confused with generic medicines.
- The proviso contained under section 2 effectively safeguards generic importation under the Industrial Property Act and as such no derogation is likely to result from the implementation of the provisions of the anti-counterfeiting legislations.
- The legislation is meant to protect consumers from harm resulting from the use of counterfeit products, including the right to life.

In addition, the respondent dismissed the fear of possible seizures of generic drugs as witnessed in other jurisdictions, in particular, Netherlands, arguing that the legal regimes were different. For example, Kenya has the constitutional right to health and provisions of the Industrial Property Act on parallel importation.

Issues for determination

In summary, the dispute before the court was whether, by enacting section 2 in its present form, and by providing the enforcement provisions in sections 32 and 34 of the Anti-Counterfeit Act, the State was in violation of its duty to

ensure conditions are in place under which its citizens can lead a healthy life; and whether these provisions will deny the petitioners access to essential medicines and thereby violate their rights to life, dignity and health under Articles 26(1), 28 and 43(1) respectively as well as sections 53 on access to basic health care for children.

The judgment

In her judgment, the learned Judge relied on the minimum core argument and the limitation analysis provided for under Article 24 of the new Constitution to reach her decision. The fact that international law is part of Kenyan law under Article 2 of the 2010 Constitution proved very significant in accommodating international law jurisprudence and arguments from the UN Special Rapporteur that tilted the balance in favour of the petitioners.

With regard to the limitation analysis, any limitation of a right must be 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'. Secondly, the judge must consider the following:

- the nature of the right or fundamental freedom;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

Parting shot

The Judge in her parting shot singled out section 2 of the Anti-Counterfeit Act for amendments to conform with the government's obligations under the constitutional rights to life, health and human dignity concerning access to generic medicines, particularly with regard to chronic diseases such as HIV and AIDS that affect the majority poor who are unable to afford branded medicines.

The meaning of the judgment to the HIV and AIDS actors

In order to demonstrate the actual meaning of the judgment for HIV and AIDS actors, it is important to examine the events after the judgment. First, in the Court about 40 people wore T-shirts branded with slogans such as 'health is my right', 'access to generic medicines' and 'fight counterfeits not generics'. These messages would seem to have been clearly considered by the judge in her judgment. This was evident by the fact that all persons present in court, including persons living with HIV and AIDS, burst into protracted singing and dancing outside the court afterwards, signaling victory.

Second, the case attracted national, foreign and international media attention. The importance of this case for HIV and AIDS actors therefore cannot be overemphasised.

Third, the decision effectively settles the debate concerning the supremacy of human rights over intellectual property rights protection and by extension, over any other interest. Human rights therefore actually trump private interests including commercial interest.

Finally, the decision effectively underscores the crucial role played by generic medicines in intervening in public health emergencies and particularly the fight against HIV and AIDS. At the end of 2011, about 1.6 million people in Kenya were living with HIV. An estimated 743 000 Kenyans are eligible for antiretroviral treatment, of whom 539 000 currently receive it. Kenya's national HIV treatment programme relies heavily on access to generic antiretroviral medicines. By the middle of 2001, triple combination therapy was available from Indian generic manufacturers for as little as US$ 295 per person per year.

The price of antiretrovirals for low- and middle-income countries has continued to fall. Between 2004 and 2008, first-line antiretroviral regimens in lower- and middle-income countries declined by 30–68%. The most widely used drug combination is available for US$ 64 per person per year. In Kenya, all government programmes offer first-line antiretrovirals free of charge.

Moving forward, appropriate policies should be put in place to further develop the sector to combat public health scourges in the country for the benefit of everyone.

The legal import of the judgment

Legally speaking, this judgment means that sections 2, 32 and 34 of the Kenya Anti-Counterfeit Act have been declared unconstitutional and therefore cannot be enforced insofar as they affect access to affordable and essential medicines. The judgment also affirms that protection of human rights ranks higher than other obligations of the government, including the protection of private intellectual property rights. It is therefore crucial that all legislations conform to the important legal principle that the case has established. Failure to conform means that the courts will not be hesitant to declare such legislation unconstitutional, as happened in this case.

Lessons learnt

The following are the lessons learnt in this case.

- In terms of strategy, the decision has positively confirmed the effectiveness of public interest litigation as a tool for advocacy. The mobilisation of people living with HIV also proved significant. The decision by the court provides an authoritative and persuasive tool for use by various actors, even beyond the HIV and AIDS sector, to promote access to medicines locally and internationally.
- There is need to ensure that a country's constitution and legislation are safeguarded against infringements that may be motivated by ulterior motives. While the right to life and dignity were present in the previous Constitution, in the writer's opinion the quality of the decision that led the government not to appeal against it was informed by the fact that the new Constitution expressly protected the right to health. Further, it al-

lowed for the application of international law including foreign decisions in the domestic context.
- The synergy of all actors including ALP and the Special Rapporteur was effective. The participation of other organisations in terms of mobilisation of persons living with HIV and AIDS and others was crucial in proving the existence of a category of persons who rely on generic medicines. This issue therefore was readily accepted by the court. Finally, wide media coverage ensured that the decision achieved the publicity that it deserves to influence access to medicines campaigns.

Way forward

While the judgment marked a great victory for actors in the HIV and AIDS sector, care should be taken to avoid complacency. In particular, the civil society organisations involved in working around access to medicines should:

- engage the government in amending the anti-counterfeiting legislation to protect access to generic medicines in Kenya;
- review other existing laws on intellectual property, medicines and laws related to the right to health with a view to advocate for amendments to further guarantee access to generic medicines in line with the new Constitution; and
- engage in the discourse of medicines regulation to guarantee the quality, efficacy and safety of medicines in Kenya.

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Paul Ogendi, LLM Candidate, University of Pretoria.

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Recent developments on poverty and human rights

Ebenezer Durojaye

After more than a decade of consultations, meetings and debates, the Guiding Principles on extreme poverty and human rights were finally adopted by the UN Human Rights Council during the 21st Session of the Council in Geneva, in September 2012.

Though not a binding instrument by any standard, the Principles provide global policy guidelines that, for the first time, focus specifically on the human rights of people living in poverty. The Principles are expected to serve as an important practical tool for policy-makers to ensure that public policies (including poverty eradication efforts) reach the poorest members of society, respect and uphold their rights, and take into account the significant social, cultural, economic and structural obstacles to human rights enjoyment faced by persons living in poverty.

The Principles emphasise the point that eradicating extreme poverty is not only a moral duty but also a legal obligation under existing international human rights law. The main objective of the Principles is to provide guidance on how to apply human rights standards in efforts to combat poverty.

The Principles draw on existing international human rights norms and standards to which states are already committed, such as the Universal Declaration on Human Rights and the International Convention on the Rights of the Child. Yet, too often an implementation gap exists between countries signing up to guaranteeing a right – to health, education or participation in decision making – and their effective realisation by their most marginalised citizens.

The Guiding Principles can serve as important benchmarks for measuring states efforts and commitment towards eradication of poverty at the national level.

The full text is available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-39_en.pdf

Recent development on health and human rights

A human rights-based approach to maternal mortality

Gladys Mirugi-Mukundi

During the 20th session of the UN Human Rights Council in July 2012, the UN High Commissioner for Human Rights (HCHR) released a report on technical guidance for applying a human rights-based approach to implementing policies and programmes to reduce preventable maternal morbidity and mortality.

The report's aim is to assist policymakers in improving women's health and rights by providing guidance on implementing policies and programmes to reduce maternal mortality and morbidity in accordance with human rights standards. Maternal mortality and morbidity continue to exact a terrible toll on women, and especially impoverished women, in many countries worldwide. The World Health Organization estimates that 88% to 98% of maternal deaths are preventable. The Millennium Development Goal 5 calls for a 75% reduction in maternal mortality ratios from 1990 levels, and universal access to reproductive health by 2015, the latter being the target that is most off-track.

A previous report from the HCHR on preventable maternal mortality and morbidity and human rights (A/HRC/14/39) identified seven human rights principles fundamental for understanding maternal mortality and morbidity as a human rights issue: accountability, participation, transparency, empowerment, sustainability, international assistance and non-discrimination.

A second previous report (A/HRC/18/27) outlined categories of good practices for addressing maternal mortality and morbidity in compliance with human rights obligations: enhancing the status of women, ensuring sexual and reproductive health rights, strengthening health systems, addressing unsafe abortion, and improving monitoring and evaluation. It acknowledges that the current rate of global decline in maternal mortality and morbidity is insufficient to achieve the MDG target by 2015.

It further states that good and effective practices to eliminate mortality and morbidity using a human rights-based approach may be complex and specific to the local situation. Maternal mortality and morbidity are the consequence of gender inequality, discrimination, health inequity and a failure to guarantee women's human rights.

The report identifies five common features of good and effective practices to eliminate preventable maternal mortality using a human rights-based approach:

(1) Broad social and legal changes to enhance women's status by promoting gender equality and eliminating harmful practices;
(2) Increasing access to contraception and family planning to enable women and adolescent girls to make decisions regarding their sexuality and fertility, including delaying and limiting childbearing and preventing sexually-transmitted infections, including HIV/AIDS, supported by access to education on sexuality and sexual and reproductive health;
(3) Strengthening health systems and primary health care to improve access to, and use of, skilled birth attendants and emergency obstetric care for complications;
(4) Addressing unsafe abortion for women;
(5) Improving monitoring and evaluation of State obligations to ensure the accountability of all actors and to implement policies.

Africa has:

> produced demonstrable results at reducing maternal mortality and morbidity by giving effect, to varying degrees and in different ways, to certain principles of a human rights-based approach: equality and non- discrimination, participation, transparency, empowerment, sustainability, accountability and international cooperation.

Throughout the region there have been concerted efforts to abandon female genital mutilation and cutting, implementation of programmes to engage men as partners in healthy sexual relationships, and development of national policies and guidelines for maternal death reviews. The role the role that quasi-judicial bodies can play in ensuring government accountability for maternal health was also highlighted as important.

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-22_en.pdf

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South Africa's Campaign for Accelerated Reduction of Maternal Mortality in Africa

South Africa has one of the highest rates of maternal and child mortality internationally, with a maternal mortality ratio (MMR) of 310 deaths per 100 000 live births and an under-five mortality rate of 56 deaths per 1 000 live births.

According to UN International Human Development Indicators, South Africa's MMR increased from 230 deaths per 100 00 live births in 1990 to 440 deaths per 100 000 live births in 2005. The 2011 'Stop Making Excuses' report on maternal health care in South Africa by Human Rights Watch implies that the MMR 'has more than quadrupled in the last decade, leaping from 150 to 625 deaths per 100 000 live births between 1998 and 2007.'

The fifth 'Saving Mothers Report' by the South African Department of Health indicates that the MMR has increased over the past six years. The report acknowledges that data on maternal mortality is notoriously difficult to gather and evaluate, and the increase is probably due to an increase in both reporting and in actual deaths (especially among women living with HIV).

The report further details that:

> maternal deaths due to non-pregnancy related infections, obstetric haemorrhage and hypertension were the three biggest contributors to preventable maternal deaths, accounting for two-thirds of avoidable deaths.

To reduce this, the Campaign on Accelerated Reduction of Maternal Mortality in Africa (CARMMA) was launched at Osindisweni Hospital in Ethekwini District, KwaZulu-Natal, on Friday 4 May 2012.

The Campaign is an initiative by the African Union and the United Nations Population Fund (UNFPA). It covers all African countries and is themed 'Africa Cares: No Woman Should Die While Giving Life.'

The aim of CARMMA is to intensify the implementation of the Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007–2010 (Maputo Plan of Action, now extended to 2015) for the reduction of maternal mortality in Africa.

Several UN agencies, bilateral donors and the International Planned Parenthood Federation support CARMMA at the national, regional and global levels. The campaign currently focuses on four key areas:

- building on-going efforts, particularly best practices;
- generating and providing data on maternal and newborn deaths;
- mobilising political commitment and the support of key stakeholders; and
- accelerating actions aimed at the reduction of maternal, infant and child mortality in Africa.

In essence the Campaign is directed at reducing the high rate of pregnancy-related deaths in Africa by urging governments to ensure that adequate resources are generated and re-allocated towards sexual and reproductive health services.

South Africa has many strong policies on maternal and reproductive health and the highest per capita spending on health in sub-Saharan Africa. However, these policies have not been effective in reducing maternal mortality. According to Human Rights Watch:

> The challenge is to make this commitment a reality for women by making sure the many strong reproductive health policies that South Africa already has are carried out.

At the 12th African Union Assembly of Heads of State and Government in Addis Ababa in January–February 2009, African leaders reached the conclusion that a major push was required in order to avoid as many as 2.5 million maternal deaths, 2.5 million child deaths and 49 million maternal disabilities in the next 10 years (based on UNFPA and WHO estimates).

They then committed themselves to giving maternal, infant and child health high priority on Africa's development agenda by adopting maternal and child health as the theme for the July 2010 Summit in Uganda, under the theme: 'Maternal, Infant and Child Health and Development in Africa'.

CARMMA derives its significance and authority from previous commitments made by African heads of states on maternal health and the achievement of health-related Millenium Development Goals. There are fears that many African countries may not meet the target of reducing maternal mortality by 75% by 2015.

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Call for contributions to the ESR Review

The Socio-Economic Rights Project of the Community Law Centre (University of the Western Cape) welcomes contributions to the ESR Review. The ESR Review is a quarterly publication that aims to inform and educate politicians, policy-makers, NGOs, the academic community and legal practitioners about key developments relating to socio-economic rights at the national and international levels. It also seeks to stimulate creative thinking on how to advance these rights as a tool for poverty alleviation in South Africa and abroad.

Contributions on relevant experiences in countries other than South Africa, or on international developments, are therefore welcomed. Contributions should focus on any theme relating to socio-economic rights, on specific rights or on socio-economic rights in general. In addition, we are currently seeking contributions on:

- the role of Parliament in advancing socio-economic rights;
- the African Commission and socio-economic rights;
- pursuing economic, social and cultural rights and combating inequalities and poverty, including in the context of the economic, food and climate crises;
- using international law to advance socio-economic rights at the domestic level; and
- South Africa's reporting obligations at the UN or African level, or both, in relation to socio-economic rights.

Contributions should be sent in electronic format (MS Word) to serp@uwc.ac.za or gmirugi-mukundi@uwc.ac.za.

Previous editions of the ESR Review and the complete guide for contributors can be accessed online: www.communitylawcentre.org.za/clc-projects/socio-economic-rights