

July 12th, 2016

Support Letter of Civil Society Organizations to the UN High Level Panel on Access to Medicines

To the distinguished members of the UN High Level Panel on Access to Medicines,

The undersigned organizations of civil society, which bring together several civil society organizations that work at the local level in Latin America, the Caribbean, United States, Europe, Brazil or Colombia, would like to hereby express their support to the UN High Level Panel on Access to Medicines and to urge its members to present an effective outcome report.

The High Level Panel's mandate of proposing solutions for remedying the policy incoherence between public health, international human rights, trade rules and rights of inventors in the context of health technologies represents a unique opportunity to overcome an urgent global challenge. We welcome the United Nations Secretary-General for convening this High Level Panel as a follow-up of the Global Commission on HIV and Law's final report and in line with the Sustainable Development Goals.

Advances on the international debate on addressing the lack of innovation and access to medicines on the last decades have proven to be too little. Countless reports and several political declarations have had few practical outcomes and insufficient political support.

In this context, it is imperative that the outcome report of the High Level Panel do not mean a *status quo* of the current incoherence nor a setbacks on people's right to access to medicines. On the contrary, it is urgently needed that the report brings effectively advances in essential key points of this issue. Particularly, we respectfully urge you to dedicate special mention in the report to the following aspects:

- Recognition that the lack of health-driven innovation and access to medicines affects not only neglected but all diseases, and that it constitutes a global problem, even though it affects disproportionately LDCs and developing countries, which should be emphatically highlighted in the report.
- Recognition that the Panel's mandate encompasses not only medicines but also all health technologies, including vaccines.
- Pushing forward bidding mechanisms for the promotion of access to medicines. Philanthropy and voluntary mechanisms have proven to be insufficient to address the challenges on accessibility. Furthermore, we consider that there would not be a need to direct so much time and resources to this high-level political process if

its recommendations are aimed to be only voluntary and which could be adopted or not without any consequences.

- Accountability provisions for human rights violations regarding access to medicines, whether violations are perpetrated by States or private actors, particularly pharmaceutical companies.

We take with grave concern the attempts to delegitimize the HLP's process conducted by some countries and private actors. In particular, we vigorously disagree with discourses that try to deny the evidence-based incoherence between public health and intellectual property protection.

Moreover, we strongly reject manifestations from stakeholders trying to prevent the report from even mentioning important historic public health achievements, such as the right that countries have to fully use TRIPS' flexibilities, which has been widely consolidated in international standards for at least 15 years through the Doha Declaration on the TRIPS Agreement and Public Health. Even so, countries still face many obstacles when trying to exercise such right. The scarce number of countries who are currently engaging in issuing compulsory licenses, such as Colombia, or who are adopting public-health oriented patent examination criteria at national level, such as Argentina and Brazil, have been facing strong and unscathed reprisals by so-called developed countries and multinational pharmaceutical companies. Societies, especially those in vulnerable conditions, need that the report moves forward and put these reprisals at the level of human rights violations, and not be a setback on the right of countries to fully use the TRIPS flexibilities to promote access to medicines.

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In addition, the current scenario of imminent public health threats through free-trade agreements, that contain TRIPS-plus provisions that harm the right of access to medicines, makes it highly indispensable that the Panel's outcome report stresses the duty of States of not to push forward clauses that undermine the use of TRIPS flexibilities nor to bring additional barriers to access to medicines¹. We consider useful that the report reminds all countries that they have binding obligations under the international trade agreements, but it is essential that the report emphasizes the obligations that countries have under international human rights treaties, including, not only the right, but the duty, to adopt all available measures to fulfill the human right obligation related to assuring access to medicines; this includes the full use of TRIPS flexibilities and also not adopting

¹ UNITED NATIONS. Committee on Economic, Social and Cultural Rights. General Comment n. 17. The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art. 15). par. 35.

measures that would make even more difficult to meet their obligation of implementing the right to health².

Finally, there has been more than enough evidence presented to this Panel showing that the current innovation model in the health sector, based on the granting of intellectual property rights, has failed to address most of the health needs of the world's population and, when innovation does happen, it is unaffordable for millions of people worldwide, even in the rich countries. The innovation system is mostly market-driven and not health needs-driven. It is urgently needed a greater political support for the adoption of new models of innovation and the HLP has an enormous possibility to play a role favoring the initiation of real solutions that would be people-oriented.

The High Level Panel's process has been supported by the mobilization of numerous civil society organizations, including through sending contributions or actively participating in the public hearings in London or Johannesburg. Your challenging assignment represents a serious responsibility in a world where, for millions of people, the full enjoyment of the right to access to medicines as an elemental aspect of the right to health still remains as a distant goal. We trust that you will meet the high expectation of change that relies on you.

Yours sincerely,

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(Organized in alphabetical order)

Alianza LAC-Global por el Acceso a Medicamentos (The Latin America & Caribbean – Global Alliance for Access to Medicines; Regional)

Comité de Veeduría y Cooperación en Salud (CVCS; Colombia)

Grupo de Trabalho sobre Propriedade Intelectual da Rede Brasileira pela Integração dos Povos (GTPI/Rebrip; Brazil)

Red Latinoamericana por el Acceso a Medicamentos (RedLAM; Regional)

² UNITED NATIONS. SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. Follow-up to the day of general discussion on article 15.1 (c), Monday, 26 November 2001. Human rights and intellectual property. Statement by the Committee on Economic Social and Cultural Rights. E/C.12/2001/15, par. 12.