



Dissemination of Information/ Occasional Communications/Information on PAHO activities .December 2010

Dear [ECONMED](#) participants,

- The growing role played by courts, and other legal organs and jurisdictions, within the framework of the development and implementation of public health policies is recognizable feature in multiple national contexts. A dynamic induced to a great extent by the works of institutional mechanisms of guarantee for a set of state obligations, of universal fulfillment and respect on behalf of national authorities, identified as human rights.
- The [right of every person to the enjoyment of the highest possible level of physical and mental health](#) is codified and expressed in various international (most specially Article 12 of the International Covenant on Economic Rights, Social and Cultural ([CESCR](#))) and regional (Article 10 Additional Protocol to the [American convention on Human Rights](#) in the area of Economic, Social and Cultural Rights (ESCR) "[protocol of San Salvador](#)") human rights agreements and conventions. The right to health as an almost universally acknowledged fundamental Human Right which enjoyment and fulfillment on the part of citizens greatly depends on the guarantees set on place to secure an access to medicines and pharmaceutical products in adequate (WHO-described) safety, quality and accessibility conditions (notion confirmed by the authorized interpretation of [CESCR](#) Article 12 by the [Committee of Economic Rights, Social and Cultural](#), UN mandated organ for the control and vigilance of the [CESCR](#) in [General Comment No. 14](#) issued in march 2000). The fulfillment of which shall imply setting up mechanisms to enhance community participation whereon might be possible to invoke it or seek remedy in case it has being violated or unobserved. **The impact of those decisions, rulings and legal assessments on policies and (in) public actions in the area of access to drugs represents a challenge to be met on the part of national authorities. It implies also a challenge for those specific units linked to the implementation of the judicial act.**
- In connection with the issue and aiming to provide basic elements for a common analysis we are glad to share the [constitutional standards in Health](#) initiative , a compilation of the diverse expressions of State commitment to in the promotion and defense of the public Health in various Constitutions of the Latin American region, with special attention being paid [Argentina](#), [Plurinational State of Bolivia](#), [Brasil](#), [Chile](#), [Colombia](#), [Costa Rica](#), [Cuba](#), [Ecuador](#), [El salvador](#), [Guatemala](#), [Honduras](#), [Mexico](#), [Nicaragua](#), [Panamá](#), [Paraguay](#), [Peru](#), [Dominican Republic](#), [Uruguay](#) y [Bolivarian Republic of Venezuela](#). **A useful tool for public health professionals, and staff members but also for lawmakers and judicial personnel.**
- In order to examine more thoroughly some of the aforementioned aspects, we are glad to put at your disposal two documents on the influence of the constitutional arrangements and the legal framework derived from it on both access to medicines and pharmaceutical products and on the design, development and implementation of public health policies within inter-institutional frameworks. Both texts coincide in pointing out that the weight and importance of such influence has evolved in parallel to the growing role of courts and judges in the interpretation of the human right to the health and necessary State response to eventual judicial requirements.
- With special attention to the access to drugs, the editorial [Access to essential medicines in national constitutions](#) (attached and hyperlinked) appeared in the November's issue of the [World Health Organization \(WHO\) Bulletin](#). Underscores the importance of the constitutional recognition to the right to health in order for its violation not to go unpunished nor un-remedied. In addition it highlights how national constitutional recognition to the right to the access to products and medical technologies has been incorporated as indicator and milestone in [WHO Strategic Plan 2008-2013](#).
- A study precisely elaborated as a basis for this indicator I reveal that of a total of 186 examined Constitutions, 135 (73%) contain health-related provisions or the right to health, identifying equally 95 constitutional documents (51%) including specific mentions to right to access to installations, goods and health services. Finally, within the framework of the Americas national experiences such as [México](#) and

[Panamá](#) which refer explicitly to the universal access to drugs are highlighted. While formulations on access developed by States such as [Cuba](#) and [Nicaragua](#) stress the need for developing specific pharmaceutical policies in order to achieve the constitutional objectives established also in [Panamá](#) and [Ecuador](#).

- It is important, as a result, to examine the impact and influence of the constitutional organs of enforcement and interpretation both on the development of health and/or pharmaceutical policies and their interaction with other actors in the system, either representatives of the State, Health Sector, or autonomous institutions in specific national situations. This is one of the goals of the other article that we share with the participants of [ECONMED](#). In How [How do Courts Set Health Policy? The Case of the Colombian Constitutional Court](#) (attached and in hyperlinked), the authors analyze the situation in Colombia after the T-60/2008 decision issued on July 2008 by the Colombian Constitutional Court that urged a drastic restructuring of the national health system; presented in the text as the result of a process of litigations paper confirms how the can effectively ensure the access to health goods as part of the defense and protection of fundamental human rights affecting policies and specific health actions even when supplementary resources could be required or previous legislative considerations have not been honored.
- The relationship between human rights and access to health goods and services is an extremely wide field of analysis, with legal, judicial and political expressions whose economic implications depend on the context and general situation. The access to drugs and health technologies in proper conditions as a part of the fundamental commitment of guarantee and respect for the human rights constitutes one of the principal tenets PAHO in the development of its activities of technical cooperation in areas such as the management of the [intellectual property rights from public health perspective](#) or procurement planning or capacity building of public health personnel - staff members and other health-related (or not) public officials.

References

Access to essential medicines in national constitutions

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b. Department of Essential Medicines and Pharmaceutical Policies, World Health Organization, 20 avenue Appia, 1211, Geneva, 27, Switzerland. *Bulletin of the World Health Organization* 2010;88:800-800. doi: 10.2471/BLT.10.078733

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[ECONMED](#) counts on the contribution (through requests of information, sharing of best practices, dissemination of interesting materials...) of its participants to keep building up collaborative spaces of work between public health professionals in the Americas. You can submit your communications on any topic related to the legal and economic regulation of pharmaceutical products for approval to econmed@listserv.paho.org

