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Legal protection of the right to health and access to medicines under Algerian law

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Abstract---Medicine has become one of the vital commodities that run the lives of individuals, especially in recent times, when the world is witnessing a widespread of deadly diseases and epidemics that threaten the human right to enjoy the highest level of health. On this basis, the majority of the world's legislation has ensured the establishment of legal frameworks that guarantee the protection of this right, taking into account the subject of medicine, as it is one of the most common and effective ways to prevent and treat illnesses. Accordingly, this article will address the subject of medicine and the right to health by explaining their concept and the most important legal texts that elaborated the principle of the right to health, embodied in framing the field of medicine by identifying the substances that are considered among medical drugs, reaching its ultimate goal to preserve physical and mental integrity for individuals.
Keywords---medicine, the right to health, diseases, Algerian legislation, international treaties.

Introduction

Health has long been one of the fundamental issues addressed in numerous international conferences and political discourses due to its close connection with the concept of sustainability, which requires achieving development without causing harm that could undermine the rights of future generations. It is also regarded as one of the principal indicators used to measure the well-being of societies and the level of development of nations. The first question that naturally arises when discussing health concerns how it can be preserved and protected. This requires establishing a legal framework governing health-related matters. Undoubtedly, the demand for the protection of any interest presupposes that such an interest is recognized as a legal right. This objective has indeed been achieved through the international community's consensus in recognizing health as a fundamental right guaranteed to everyone under the concept of the "right to health."

However, this recognition alone is insufficient. To ensure the effective realization of this right, attention must also be given to its practical dimension, namely the means and mechanisms through which it can be achieved. The most logical and immediate means are medicines and pharmaceutical products, which have been known since ancient times for their therapeutic effects. Since God Almighty created humankind, He has ordained that people experience illness and disease for profound divine wisdom while simultaneously inspiring them to seek remedies for life's challenges. From this perspective emerged the concept of medicine, which initially consisted of traditional remedies derived from natural resources such as herbs and oils, prepared by individuals possessing knowledge and wisdom.

With the advancement of science and the emergence of new and sophisticated fields of knowledge, medicines evolved beyond simple natural mixtures to formulations

based on chemical substances interacting with other components to produce the intended therapeutic effect. This development has not only transformed the composition of medicines but has also influenced their legal regulation through the enactment of legislation governing the pharmacy profession. Consequently, the manufacture, distribution, and retail sale of medicines have become activities exclusively entrusted to licensed pharmacists. Furthermore, specialized administrative and regulatory bodies have been established to oversee pharmaceutical products throughout every stage of their lifecycle, from production to their placement on the market.

The importance of this research stems from the intrinsic value of its core components. Medicines have become an essential necessity for human life, and given the potential risks arising from their misuse or from failure to comply with scientific and legal standards governing their use, it is essential to define the concept of medicine, clarify the legal rules applicable to it, and explain the mechanisms through which it affects public health. Moreover, the right to health represents one of the highest expressions of human dignity and constitutes one of the fundamental principles promoted by international organizations, particularly the World Health Organization. Ensuring the effective enjoyment of this right enables individuals to become healthier, more productive, and more active members of society, thereby improving their standard of living and contributing to the prosperity and development of communities and nations.

This study aims to shed light on the legal perspective of the right to health and the issue of access to medicines as two interdependent and indispensable elements of human life. It does so by examining the international and national legal instruments addressing the right to health, as well as the provisions of Algerian legislation and selected comparative legal systems governing medicines. The study also seeks to clarify the relationship between medicines, as consumer goods, and the realization of the right to health.

In light of the foregoing, the research seeks to answer the following central question: What is the legal framework established for the protection of the right to health, and how does access to medicines contribute to strengthening this protection?
To answer this question, the study is divided into two main sections. The first examines the legal framework of the right to health, while the second addresses access to medicines and its role in the effective realization of the right to health. The study adopts a comparative analytical approach, which is particularly suited to analyzing the relevant legal texts, examining the various doctrinal opinions on the subject, and comparing the provisions of Algerian legislation with those of selected comparative legal systems.

Chapter One: The Legal Framework of the Right to Health

The right to health has long been regarded as one of the central issues discussed in numerous international forums and as one of the fundamental principles enshrined in the constitutions and legal instruments of international organizations, given its intrinsic connection to human dignity. Accordingly, this chapter first examines the nature of the right to health (Section One), followed by an analysis of the legal recognition and protection of this right (Section Two).

Section One: The Nature of the Right to Health

Examining the nature of the right to health, as one of the most fundamental human rights, requires defining its concept and identifying the principles, foundations, and guarantees upon which it is based.

Subsection One: The Concept of the Right to Health

The right to health has a broad scope, as it extends to numerous fields and dimensions. Accordingly, it is necessary to define this right and distinguish it from related concepts, particularly the principle of health care, before examining its legal nature in light of the provisions of Algerian Law No. 18-11 on Health.

A. Definition of the Right to Health

It is first necessary to define the concept of health itself and distinguish it from the concept of the right to health. From a doctrinal perspective, health was traditionally understood as the mere absence of disease. However, this definition has been criticized by legal scholars for being too narrow and failing to encompass all aspects of health. According to certain Islamic legal scholars, health is defined as: "the protection of individuals from risks and harms that may lead to illness or adversely affect their health" **(Shawakh, 2018, p. 05)**From a legal perspective, several international organizations have defined health. The Preamble to the Constitution of the World Health Organization (WHO) defines health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity." Similarly, the World Bank considers health to be a condition associated with the effects of increased income and education on individuals' behavior, the level and efficiency of health expenditure within a country's healthcare system, and the prevalence of diseases within society, while taking into account environmental and climatic conditions **(Khroubi, 2010-2011, p. 14)** Likewise, the 1978 Alma-Ata Declaration affirmed that health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.

Having clarified the concept of health, attention may now be directed to the concept of the right to health, which refers to every individual's entitlement to enjoy healthcare services without discrimination and to benefit from healthy living conditions that enable the highest attainable standard of health. The right to health is both a universal and a personal human right. It is universal because it concerns all

human beings without exception, and personal because of its close relationship with the right to life. Health is an essential prerequisite for life, and preserving and protecting it falls within the scope of human rights. Consequently, safeguarding the right to health constitutes an indispensable condition for protecting the right to life and ensuring that individuals are able to fulfill their role in society **(Kandli, 2016, p. 221)**

B. Distinguishing the Right to Health from the Principle of Health Care

The principle of health care constitutes the cornerstone for supporting the right to health in international law

(Belhanfi, 2018, p. 13) It was first adopted at the International Conference on Primary Health Care held in Alma-Ata, Kazakhstan, in 1978. Article 6 of the Declaration provides:

"Primary health care is essential health care based on practical, scientifically sound, and socially acceptable methods and technology, made universally accessible to individuals and families in the community at a cost that the country can afford, regardless of its level of development."

It should be noted that the concept referred to in the above-mentioned provision lacks precision, as it does not provide a comprehensive definition of the principle of health care but merely outlines its general characteristics. These characteristics become more evident in the second part of Article 6 of the Declaration, which describes primary health care as the backbone of comprehensive social and economic development. It further emphasizes that primary health care constitutes an integral part of the national health system, bringing healthcare services closer to where people live and work, thereby ensuring continuous health protection.

Given the ambiguity surrounding the legal meaning of health care and the absence of extensive discussion of this issue within Algerian legal scholarship, it is necessary to refer to Western legal doctrine. In this regard, legal scholars have generally adopted two approaches in interpreting the concept of primary health care.

The first approach adopts a functional perspective, defining primary health care as a comprehensive vision of the health system centered on the individual. According to this view, it is characterized by comprehensiveness, continuity, and integrated care. Its principal components include equity and social justice, ensuring that healthcare services are accessible to everyone, while also promoting community participation, particularly cooperation among different sectors involved in healthcare delivery.

The second approach considers primary health care to be equivalent to primary medical care or first-line care, representing the patient's initial point of contact with healthcare professionals. Under this interpretation, primary health care consists

mainly of conducting medical examinations and providing available therapeutic interventions. However, this interpretation is open to criticism because it does not accurately reflect the concept of primary health care established by the Alma-Ata Declaration, which is founded upon broader principles, including equity, intersectoral collaboration, and the adoption of appropriate technology. These objectives cannot be fully achieved through the narrow concept of first-line medical care alone, since such care represents only one component of the broader principle of primary health care. Consequently, the more persuasive view is that primary health care constitutes a comprehensive and integrated system encompassing the various levels of healthcare, all of which are interconnected to meet the health needs of individuals **(Crismer, 2016, p. 379)**

C. The Legal Nature of the Right to Health

Article 12 of Law No. 18-11 of 29 July 2018 relating to health provides that the State is responsible for "ensuring the realization of the right to health as a fundamental human right at all levels through the expansion of the public health sector to cover the entire national territory." An analysis of this provision demonstrates that the Algerian legislator considers the right to health to be one of the fundamental and basic human rights. To guarantee its effective enjoyment, the legislator sought to extend health services throughout the country so that they would be accessible to everyone, thereby preventing individuals from being denied medical treatment due to their inability to bear the costs imposed by private healthcare institutions. In furtherance of this objective, the Algerian government adopted the principle of free medical care to ensure comprehensive health coverage and make this right accessible to all segments of society.

However, legal scholars have differed regarding the legal nature of the right to health. Some consider it a natural right, while others regard it as a positive legal right **(Kandli, 2016, p. 218)**Another view classifies it as a personal right, consisting of a legal authority granted by law to one person, referred to as the "creditor," against another person, referred to as the "debtor," enabling the former to compel the latter either to perform or refrain from performing a specific act in order to protect the creditor's legitimate interest. It is described as a "right" from the perspective of the creditor and as an "obligation" from the perspective of the debtor. Applying this concept to the right to health, the creditor is the individual claiming his or her right to health, whereas the debtor is the State, together with all actors operating within the health sector who are legally obliged to provide healthcare and medical treatment.

Contrary to the foregoing view, other scholars argue that the right to health belongs to the category of general civil rights, also referred to as rights inherent to the human personality. These rights accrue to every individual from the moment of birth

until death and include, for example, the right to life, the right to bodily integrity, and the right to freedom of movement. Such rights are considered fundamental and indispensable, as human beings cannot live without them. This opinion appears more persuasive, as it reflects the approach adopted by the Algerian legislator in successive constitutions, which implicitly recognized the right to health by incorporating the principle of healthcare within the provisions of Chapter II of the Constitution concerning fundamental rights and public freedoms.

Section Two: Foundations, Principles, and Guarantees Underlying the Right to Health

From the perspective of Algerian law, the right to health is founded upon two principal pillars: universality and intersectoral cooperation. This is inferred from the legislator's use of the term "is based on" in Articles 4 and 5 of Law No. 18-11 relating to health. Universality concerns the national health system, which consists of public healthcare institutions and facilities alongside the effective contribution of the private sector. Intersectoral cooperation, on the other hand, requires the participation of various sectors in implementing the national health policy. An example is the education sector, which contributes to raising public awareness and promoting health education concerning communicable diseases, methods of prevention, and other guidance aimed at enhancing health literacy.

Article 3 of the same law establishes the principle of equality in access to healthcare. The right to health is therefore a universal rather than an exclusive right, benefiting all individuals without distinction. To achieve this objective, the legislator emphasized the need to ensure continuity and integration between preventive and curative healthcare activities. Furthermore, the legislator introduced the fundamental principle of comprehensiveness, which may be regarded as an extension of the principle of equality, requiring that citizens' healthcare needs be addressed in a coherent manner that guarantees the continuity of health services.

Article 21 of the same law further emphasizes the necessity of removing obstacles that hinder individuals from obtaining appropriate healthcare and medical treatment. This includes guaranteeing the assistance required by the patient's medical condition, as well as ensuring access to specialized healthcare services upon referral by the primary physician. This reflects the principle of continuity and integration of medical treatment established under Article 3, while ensuring strict respect for the confidentiality of patients' medical information.

With regard to guarantees, these refer to the legal principles and rules contained within both international and domestic legal systems that are intended to protect and safeguard rights and freedoms, commonly referred to as legal guarantees **(Al-Rashidi, 2003, p. 156)** Among the guarantees provided by the Health Law is the

assurance of effective health planning and the balanced, equitable, and rational distribution of human and material resources based on healthcare needs, which are primarily determined by two indicators: demographic developments and emerging epidemiological patterns that may affect one or more regions. Article 13 of the same law also guarantees free medical treatment for all citizens while regulating prevention, protection, and health promotion. In addition, Article 18 guarantees access to a minimum package of essential primary healthcare services, as well as secondary and specialized healthcare services, thereby reflecting the principle of the progressive and hierarchical organization of medical treatment.

Section Two: The Legal Recognition of the Right to Health

The growing concern for health in general, and for human health in particular, has prompted both national and international efforts to establish health within a legal framework that recognizes it as a fundamental right.

Subsection One: Recognition of the Right to Health in International and Regional Instruments

The first international instrument to recognize the right to health was the Preamble to the Constitution of the World Health Organization, which states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction as to race, religion, political belief, economic or social condition."

This was subsequently reaffirmed by the Universal Declaration of Human Rights, whose Article 25 recognizes the right of every person to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care, and necessary social services. It further recognizes the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other circumstances resulting in the loss of livelihood beyond one's control.

Similarly, Article 12 of the International Covenant on Economic, Social and Cultural Rights provides that: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Unlike the aforementioned international instruments, the International Covenant on Civil and Political Rights (ICCPR) addresses the right to health only implicitly and partially. Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, and specifically prohibits subjecting any person to medical or scientific experimentation without his or her free consent.

It is also worth noting that several international treaties of a specialized nature have been concluded to protect specific groups. Among them is the Convention on the Rights of the Child (1989), whose Article 24 recognizes the right of every child to enjoy the highest attainable standard of health. Algeria ratified this Convention on 19 December 1992. Furthermore, the Convention on the Rights of Persons with Disabilities affirms the right of persons with disabilities to enjoy the highest attainable standard of health without discrimination on the basis of disability. It also calls for the effective implementation of this principle by ensuring access to appropriate healthcare services and by taking into account the specific needs of this category.

Regional human rights instruments have likewise recognized the right to health. The American Declaration of the Rights and Duties of Man (1948) enshrines both the right to the preservation of health and the right to well-being. Similarly, the African Charter on Human and Peoples' Rights, adopted in Nairobi, Kenya, on 18 June 1981, was signed by Algeria on 10 April 1986 and ratified on 1 March 1987. In addition, Article 11 of the Revised European Social Charter (1996) guarantees the effective exercise of the right to the protection of health. Likewise, the Charter of Fundamental Rights of the European Union (2000) emphasizes the protection of individual health by recognizing the right to healthcare. The same approach is reflected in the Arab Charter on Human Rights (2004), whose Article 39 affirms the right of every individual to receive free basic healthcare services and access to medical facilities without discrimination of any kind.

Section Two: The Recognition of the Right to Health in Algerian Legislation

Initially, the Algerian legislature did not explicitly recognize the right to health. This can be inferred from the provisions of the 1963 Constitution, which merely expressed Algeria's adherence to the Universal Declaration of Human Rights. The 1976 Constitution, however, adopted the principle of healthcare by providing in Article 67 that:

"Every citizen has the right to healthcare. This right is guaranteed through the provision of free public health services, the expansion of preventive healthcare, the continuous improvement of living and working conditions, and the promotion of physical education, sports, and recreational activities."

This principle was subsequently reaffirmed by the 1989 Constitutional Amendment and the 1996 Constitution, both of which emphasized the right to healthcare. The 2016 Constitution maintained the same principle in Article 66 while adding a new paragraph affirming the State's commitment to ensuring access to medical treatment for indigent persons. It should be noted that this constitutional amendment also introduced several additional guarantees, including strengthening citizens' rights to adequate housing and to a healthy and safe environment.

The 2020 Constitution adopted a more comprehensive approach by consolidating various rights aimed collectively at protecting health under Article 63. Accordingly, it can be concluded that all Algerian constitutions have consistently adopted the principle of healthcare rather than expressly recognizing the right to health.

With regard to specific legislation on health, Law No. 18-11 on Health provides in Article 12 that the State is committed to guaranteeing the effective realization of the right to health as a fundamental human right at all levels.

A comparison between Algerian and French legislation reveals that France was more proactive in recognizing the protection of health. This is evident in the Preamble to the French Constitution of 1946, through which the State guarantees health protection for the population, particularly children, mothers, and elderly workers. However, the French Public Health Code of 1953 did not expressly recognize the right to health as one of the fundamental principles safeguarding human dignity. This changed with the enactment of Law No. 2002-303 of 4 March 2002 on Patients' Rights and the Quality of the Healthcare System, which sought to align French legislation with international and regional human rights instruments concerning the right to health. Consequently, Article L1110 of the French Public Health Code explicitly provides that the protection of health is a fundamental right that must be implemented by all available means for the benefit of every individual.

As for Egyptian legislation, the Egyptian legislature likewise recognized the protection of the human right to health through the principles enshrined in the 2014 Constitution, whose Article 18 guarantees every citizen the right to health and to comprehensive healthcare in accordance with quality standards.

Chapter Two: Access to Medicines and Its Role in Realizing the Right to Health

Medicines constitute one of the principal therapeutic tools for preserving the health of both humans and animals. Moreover, access to medicines in accordance with an appropriate medical diagnosis is regarded as one of the fundamental rights necessary for safeguarding an individual's health and well-being. Accordingly, this chapter first examines the concept of medicines (Section One), followed by an analysis of the obstacles to accessing medicines and the mechanisms for addressing them (Section Two).

Section One: The Concept of Medicines

Examining the concept of medicines requires, first, defining the term, then explaining its importance through the role it plays in disease prevention and treatment, and finally determining the legal nature of the right of access to medicines.

Subsection One: Definition of Medicines and Their Importance in Disease Prevention and Treatment

A. Definition of Medicines

From a linguistic perspective, the Arabic word dawāʾ (medicine) refers to that which is used for treatment or healing, with the plural being adwiya (medicines). The verb dāwā means "to treat a patient," while tadāwā means "to take medicine" **(Majid, 2005, p. 16)**

From a technical perspective, medicine may be defined as any substance used for the diagnosis or treatment of diseases affecting humans or animals, or for relieving pain or preventing disease **(Al-Alami, 1988, p. 15)** It has also been defined as "any substance contained in a pharmaceutical product that is used to investigate or interpret physiological systems or pathological conditions for the benefit of the recipient of that substance" **(Raouf, 2001, p. 22)**Another definition describes medicine as substances administered to the human or animal body that produce a therapeutic effect through commonly accepted dosage forms such as tablets, capsules, and syrups **(Al-Qotb, 2014, p. 22)**

It is evident that the concept of medicine has been defined in various ways. Despite differences in wording and presentation, these definitions converge on a common meaning by emphasizing that a product must satisfy certain essential elements in order to be considered a medicine. These elements include the nature of the product, its source, its intended purpose, and its forms of administration.

While the legal definition of a medicinal product is closely linked to the elements of time and place, national legislations differ in their characterization of what constitutes a medicinal product from one country to another. Even within the same jurisdiction, the concept of a medicinal product may undergo several legislative amendments; consequently, it is not a fixed concept. The Algerian legislator addressed the concept of a medicinal product in Article 208 of Law No. 18-11 on Health, defining it as follows:

"Any substance or composition presented as having curative or preventive properties with respect to human or animal diseases, as well as any substance that may be administered to humans or animals for the purpose of making a medical diagnosis or restoring, correcting, or modifying physiological functions."

In this regard, two observations may be made. First, the definition of a medicinal product set out in Article 208 is identical to the definition first adopted by the French legislator in Decree No. 53-1001 of 5 October 1953 relating to the Public Health Code. Second, the concept of a medicinal product itself is based on the manner in which it is presented, as reflected in the first part of the article, namely: "Any substance or composition presented as having curative or preventive properties

with respect to human or animal diseases." In this context, it is necessary to distinguish between the notion of a substance and that of a composition.

B. The Importance of Medicinal Products in Disease Prevention and Treatment

Medicinal products contribute to the protection and improvement of health in several ways. As stipulated in Article 208 of Law No. 18-11 on Health, they may either be presented as possessing therapeutic or preventive properties against human or animal diseases, or they may be used for medical diagnosis, as well as for restoring, correcting, or modifying physiological functions.

The therapeutic and preventive characteristics of a medicinal product are associated with the concept of a medicinal product by presentation (Médicament par présentation). This is reflected in the first paragraph of Article 208, which defines a medicinal product as "any substance or composition presented as having curative or preventive properties with respect to human or animal diseases." The wording of this provision raises several interpretative questions, particularly concerning the meaning of certain terms employed by the legislator. For example, what did the legislator intend by stating that a substance is "presented" as possessing such properties? Algerian legal scholarship has addressed this issue, suggesting that such presentation may take various forms, including product labeling, newspaper advertisements, and other means of communicating the therapeutic or preventive properties of the medicinal product **(Benzemour, 2021–2022, p. 13)**

As for the concept of disease, whether affecting humans or animals, the legislation does not provide a precise definition. Part of the French legal doctrine has considered disease to be a change in a person's condition from a normal state to a pathological one **(Mendoza-Caminade, 2017, p. 39)** However, determining the exact threshold between these two states remains difficult. Faced with this ambiguity, French courts adopted a broad interpretation of the term "disease," taking into account even minor symptoms that may appear on the human body.

As previously noted, the significance of medicinal products also lies in their use for medical diagnosis, in addition to their ability to restore, correct, or modify the body's physiological functions. This concerns the second category of medicinal products, namely the medicinal product by function (Médicament par fonction). This concept is reflected in the second paragraph of Article 208 of Law No. 18-11 on Health, which provides:

"...and any substance that may be administered to humans or animals for the purpose of making a medical diagnosis or restoring, correcting, or modifying physiological functions."

This definition focuses on the effect of the substances composing the medicinal product on health in general. Consequently, it is necessary to clarify several key concepts and define their scope. Medical diagnosis is a purely technical procedure aimed at identifying or assessing the general condition of the body or of a specific organ based on the symptoms exhibited by the individual concerned. Therefore, conducting a medical examination does not, in itself, produce any therapeutic effect.

Having clarified the substances used for diagnostic purposes, it is equally important to explain the substances intended to restore, correct, or modify physiological functions. These are substances that possess therapeutic effects, with contraceptive pills serving as a notable example. It is worth emphasizing that the rationale behind establishing the concept of a medicinal product by function originated from the French legislator's intention to classify contraceptive pills as medicinal products. This objective could not be achieved under the French Public Health legislation in force before the enactment of the 1967 Law, since the legislation recognized only the concept of a medicinal product by presentation, which required the existence of a disease for a substance to qualify as a medicinal product. Such a requirement was impossible to satisfy in the case of contraceptive pills, as pregnancy is not considered a pathological condition. **(Mendoza-Caminade, 2017, p. 41)**

Section Two: The Legal Nature of Access to Medicines

Medicines are considered essential consumer goods. However, their unique nature, which is intrinsically linked to human health, raises a legal question regarding their classification: should medicines be regarded as ordinary commodities like any other goods, or should they be considered a fundamental human right? To answer this question, it is first necessary to distinguish between the legal nature of medicines themselves and the legal nature of access to medicines.

With regard to the former, medicines are viewed independently of the purpose for which they are used. From this perspective, medicines are treated like any other product available on the market and are therefore subject to the laws of supply and demand. Nevertheless, a significant body of legal scholarship argues that medicines cannot be regarded as ordinary commercial products or commodities because they are indispensable to public health. They play a crucial role in preventing disease and death. Consequently, medicines should not be approached solely from the standpoint of commercial law but rather through the lens of human rights. Health is a fundamental human right and an essential prerequisite for the enjoyment of other rights, all of which are inseparable from it **(Lourad, 2018, p. 99)**Accordingly, medicines should be accorded a status that reflects and preserves human dignity.

Furthermore, the distinctive characteristics of pharmaceutical products set them apart from other commercial goods. They constitute property of a special legal

nature, protected under patent law, which grants the patent holder—the inventor of the medicine—an exclusive right to exploit the invention in accordance with the principles of market regulation and fair competition.

The issue of access to medicines, however, extends beyond their commercial nature because it is directly related to the purpose for which they were developed. This requires prioritizing public health considerations over the profit-driven objectives of the pharmaceutical industry, particularly the financial returns sought by pharmaceutical companies. From this perspective, a segment of French legal scholars considers access to medicines to be an ethical challenge because it is closely linked to one of the most fundamental human rights, namely the right to life **(Gateaux, 2008, p. 15)**

In conclusion, although pharmaceutical products are classified as essential commodities, access to them constitutes a fundamental human right. The relationship may therefore be expressed as follows: access to medicines is a fundamental right that guarantees access to an essential good indispensable for the protection of health.

Section Two: Barriers to Access to Medicines and Mechanisms for Addressing Them in Order to Realize the Right to Health

Despite efforts undertaken at all levels to ensure universal health coverage and the effective realization of the right to health, global developments have generated adverse consequences that hinder public access to medicines, thereby rendering them increasingly scarce. Accordingly, this section first examines the obstacles to accessing medicines and then discusses the mechanisms available to overcome them in order to strengthen the right to health.

Subsection One: Barriers to Access to Medicines

The principal obstacles to accessing medicines consist of legal barriers arising from the extension of intellectual property protection to pharmaceutical products, as well as economic constraints imposed by market forces and competition rules.

A. Legal Barriers

Legal barriers primarily stem from intellectual property rights, particularly patent protection. It is worth noting that the protection of pharmaceutical products through patents is a relatively recent development, resulting from a long series of international negotiations and debates aimed at extending patent protection to medicines.

Patent protection grants the patent-holding pharmaceutical company the exclusive right to exploit the chemical compound for a period of twenty (20) years, which may

be extended in the pharmaceutical sector. This exclusivity enables the company to recover the substantial investments incurred during the research and development phase of the pharmaceutical product.

It should also be emphasized that intellectual property protection for medicines became firmly established only in 1994 with the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). An examination of its provisions reveals that they largely accommodate the interests of pharmaceutical companies by requiring member states of the World Trade Organization to protect pharmaceutical products through patents for a minimum term of twenty (20) years.

The implementation of these provisions has become a significant obstacle to access to medicines because they reinforce the economic dominance of pharmaceutical companies as patent holders. This exclusive right allows them to determine medicine prices at their discretion, which often results in prohibitively high prices. Consequently, medicines become scarce and inaccessible, particularly in developing countries. These countries are therefore compelled to wait until the expiry of the twenty-year patent protection period before lower-priced equivalent medicines, commonly known as generic medicines, can be produced or marketed.

B. Economic Barriers

The economic factors hindering the accessibility of pharmaceutical products stem from their subjection to market rules and competition, including the problem of high prices. The production of medicines requires substantial investments in research and development, followed by the necessary pre-clinical and clinical trials before they can be made available to consumers. It should be noted that the higher the cost of producing a medicine, the more its price increases accordingly, making access to it more difficult. Thus, it is not sufficient for a pharmaceutical product merely to exist; it must also be accessible and affordable to everyone. This objective can only be achieved if medicines are marketed at reasonable prices, particularly for poor populations who are in urgent need of essential medicines.

Economically powerful countries often pursue policies of dominance and monopoly in pharmaceutical pricing according to their own interests, thereby increasing the dependence of developing countries on them. Statistics indicate that the prices of essential medicines in these countries are extremely high, largely due to the considerable costs associated with pharmaceutical innovation, which are intended to recover the research and development expenses incurred by pharmaceutical companies. A notable example is Lamivudine, a drug developed for the treatment of Acquired Immunodeficiency Syndrome (AIDS). In 2000, it was sold to African countries at a price approximately 20% higher than that charged in industrialized countries, despite the fact that the average per capita income in African countries

represented only about 2% of the average income of an American citizen. It should also be emphasized that high medicine prices generally do not pose a major challenge in industrialized countries, nor do they prevent individuals from accessing medicines. This is mainly due to the comprehensive social protection systems adopted by their governments, which ensure healthcare coverage in its various aspects. In contrast, although some developing countries have adopted health insurance schemes, they often lack the financial resources necessary to cover the high costs of essential medicines **(Gateaux, 2008, p. 18)**

Section Two: Mechanisms for Implementing the Right to Health and Addressing Barriers to Access to Medicines

The international community has sought to develop solutions to overcome the obstacles preventing individuals from exercising their right to access medicines. Among the most significant mechanisms proposed is the compulsory licensing system, which has a punitive legal character. In addition, efforts have been made to develop pharmaceutical products possessing characteristics equivalent to patented medicines but offered at affordable prices, commonly known as generic medicines.

A. The Compulsory Licensing System as a Means of Combating the Unlawful Monopoly over Pharmaceutical Production and Manufacturing

According to Article 5 of the Paris Convention for the Protection of Industrial Property, a compulsory license is a measure adopted by the State as a sanction against the abuse by a patent holder of his exclusive rights. Under this mechanism, a third party is granted the right to exploit a patented invention in exchange for predetermined remuneration payable to the patent owner, as specified in the licensing decision, provided that the applicant demonstrates that he was unable to obtain a voluntary license from the patent holder on reasonable terms.

The compulsory licensing system is characterized by its broad scope, as it covers several situations in which its application may be justified. One such situation arises when the private interests of the patent holder conflict with the public interest. This is known as a compulsory license in the public interest or an automatic license. Unlike compulsory licenses imposed as a sanction for the abuse of exclusive rights, this type of license is justified solely by considerations of public interest, particularly in vital sectors such as public health, national defense, and the economy **(Nasri, 2015, p. 240)**The Algerian legislator has considered the excessive pricing of pharmaceutical products protected by patents, where such prices significantly exceed prevailing market prices, as one of the situations that justify the issuance of a compulsory license.

Compulsory Licensing

Article 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) recognizes the compulsory licensing system as one of the measures that WTO Member States may adopt to protect public health, provided that such measures comply with the provisions of the Agreement. In consideration of the interests of developing and least-developed countries, the Decision of 30 August 2003 on Public Health was adopted pursuant to Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. Its purpose was to address the situation of least-developed countries lacking a sufficient pharmaceutical manufacturing capacity and to determine the extent to which pharmaceutical products could be exported to those countries.

Accordingly, a new mechanism was established that divided WTO Members into two categories: pharmaceutical-exporting countries and pharmaceutical-importing countries. Under this system, the first group—primarily economically advanced countries—incorporates specific compulsory licensing provisions into its domestic legislation to enable the production and export of pharmaceutical products to the second group, namely developing countries that rely on imports to meet their essential healthcare needs **(Clavier, 2010, p. 183)**These importing countries regard compulsory licensing as a new mechanism for mitigating the adverse effects of the TRIPS Agreement, particularly in the pharmaceutical sector. However, practical experience has demonstrated that its implementation faces significant obstacles due to the complexity of legislative provisions and the administrative procedures required for its effective application **(Bukhari, 2020–2021, p. 103)**

B. Production of Generic Medicines

As previously noted, access to medicines is hindered by several obstacles, one of the most significant being the high price of originator medicines. This has encouraged the production of pharmaceutical products that are qualitatively and quantitatively equivalent to the reference medicine but are marketed at more affordable prices, commonly known as generic medicines. The World Health Organization (WHO) defines a generic medicine as a pharmaceutical product that is interchangeable with the reference product protected by a patent and is generally manufactured without the authorization of the patent holder **(Krikorian, n.d, p. 06)**

One of the greatest challenges facing the generic pharmaceutical industry arises when the reference medicine remains protected by a patent and manufacturers are unable to obtain either a voluntary or compulsory license. In such cases, generic pharmaceutical companies are compelled to wait until the expiration of the patent term, after which the pharmaceutical invention enters the public domain.

It is worth noting that the countries benefiting most from the expiration of patent protection for originator medicines are those that invest little in pharmaceutical research and development aimed at discovering new compounds to combat epidemics and endemic diseases, either because of limited financial resources or ineffective public policies. Consequently, pharmaceutical companies in these countries focus on manufacturing generic medicines to achieve economic gains, primarily by offering products at significantly lower prices than the original medicines. This alternative pharmaceutical industry can reduce treatment costs by up to 25% of the total cost, mainly because generic manufacturers do not bear the substantial research and development expenses that largely justify the high price of originator medicines. Furthermore, intense competition among generic drug manufacturers encourages the adoption of competitive pricing strategies to attract consumers.

Nevertheless, the manufacture of generic medicines is far from a simple process, as it presupposes the existence of a well-established pharmaceutical industrial base. In this regard, Executive Decree No. 20-325 of 22 November 2020, concerning the procedures for the registration of pharmaceutical products, stipulates that the production of generic medicines, like that of originator medicines, requires the submission of an application for Marketing Authorization (MA) to the National Agency for Pharmaceutical Products.

Conclusion

In conclusion, the majority of national legislations and international conventions recognize the right to health as the right of every individual to access the healthcare services necessary to preserve their physical, mental, and social well-being. This right overlaps with other related concepts, such as the principle of healthcare, which constitutes one of the fundamental pillars of the healthcare system and an essential component of the right to health.

In order to uphold the principle of the right to health, Algeria has ratified a number of international and regional treaties, including the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the Convention on the Rights of Persons with Disabilities (2006), the African Charter on Human and Peoples' Rights (1981), and the Arab Charter on Human Rights (2004).

With regard to domestic legislation, successive Algerian constitutions have not explicitly recognized the right to health; instead, they have merely provided for the principle of healthcare. This contrasts with the French legislator, who was a pioneer in protecting the right to health by enshrining it in the Preamble to the 1946 French Constitution. As for specific legislation, France did not expressly recognize this right until the enactment of Law No. 2002-303 on Patients' Rights and the Quality of the

Healthcare System. A similar situation existed in Algeria, where the legislator took even longer to explicitly acknowledge the right to health, doing so only through Article 12 of Law No. 18-11 on Health. Likewise, the Egyptian legislator did not expressly recognize this right until the promulgation of the 2014 Constitution.

Furthermore, it can be concluded that pharmaceuticals have long been, and continue to be, a matter of significant concern for governments, which have enacted legal provisions to define their scope and regulate their use in order to avoid disputes concerning what should or should not be classified as a pharmaceutical product. Access to medicines is regarded as a fundamental right deriving from the right to health. Nevertheless, numerous challenges continue to hinder its effective realization, particularly following the conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which requires contracting states to protect pharmaceutical products through the patent system. This has made access to medicines more difficult due to the monopoly exercised by patent-holding pharmaceutical companies over the production of originator medicines and the adoption of high pricing policies, rendering such medicines inaccessible to large segments of the population.

Although several mechanisms have been proposed to overcome these obstacles—such as the use of compulsory licensing for public interest purposes and the promotion of generic drug production—major pharmaceutical companies continue to dominate the market by employing various strategies to extend their market exclusivity, thereby increasing their financial returns. These strategies include extending patent protection through minor modifications to patented medicines, resulting in multiple patents covering the same active pharmaceutical ingredient; entering into pay-for-delay agreements, whereby the patent holder compensates a generic manufacturer in exchange for postponing the market entry of its generic product; and relying on marketing and advertising campaigns to promote originator medicines while encouraging consumers to prefer them over their generic equivalents.

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