

**Memorandum to United Nations Secretary-General Ban Ki-moon**  
From the Treatment Action Campaign, SECTION27 and Health GAP,  
International AIDS Conference, Durban, S. Africa  
July 18, 2016

17 million people who are living with HIV have access to treatment. Yet 20 million more are still waiting for their treatment. This success has been possible only because patent and pricing barriers to affordable antiretroviral medicines have been overcome in many low- and middle-income countries. As a result of generic competition and availability of medicines of assured quality from India and elsewhere, the price of triple-therapy fell from over \$10,000 per person per year in 2000 to only \$100 today for an even better fixed-dose combination. With lower prices, we advocated for and won both financing allocation and governments' commitment that resulted in the revolutionary increase in the number of people on treatment.

However, affordable access to newer, better tolerated, and more widely patented HIV medicines is less assured, especially in middle-income countries where patents are being enforced. Moreover, our global brothers and sisters who live with cancer, hepatitis C, drug resistant tuberculosis and other diseases are also facing precarious access to affordable medicines. In addition, the existing intellectual property and market-based research and development system does not prioritize medicines and vaccines for neglected diseases and neglected populations – including tuberculosis, the top infectious disease killer on the planet. This is a gross violation of international human rights law.

We commend you for recognizing this problem by establishing a High-Level Panel on Access to Medicines to “recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health.” After a nine-month process, we understand that the Panel report and recommendations will be submitted to you shortly.

We sincerely hope that the HLP Report will fulfill its mandate. We are hopeful that it will urge national governments and world leaders, who have not only a moral, but a legal, human rights and often Constitutional obligation, to ensure that everyone, everywhere can access the medicines they need. We are hopeful that the Report will urge national governments and world leaders to promptly consider alternatives to the current ways we pay for medicines and for the costs of developing new medicines.

Fulfilling the human right to health, which includes access to and the creation of health technologies, is paramount. Although medical innovators, creators, and researchers are entitled to material and reputation benefit for their research and development efforts, monopolies that transform into high prices are not required for the realization of those benefits. The UN Special Rapporteur in the Field of Cultural Rights recently affirmed that there is no human right to patent protection, stating, “where patents and human rights are in conflict, human rights must prevail.” Similarly, the UN Human Rights Council and the Special Rapporteur on the Right to Health have both affirmed that the right to health supersedes intellectual property protections.

Therefore, we have urged the High Level Panel to make strong recommendations addressing: (a) the need for an alternative system that is consistent with human rights law and public health needs, (b) the need for governments to increase investment in medical Research and

Development (R&D) and develop norms that both prioritise these activities towards patient driven needs and ensure people's access to its outcomes, (c) transparency in every aspect of the pharmaceutical market including industry spending on medical R&D, prices, sales, research and clinical trial outcomes, (d) the need for new R&D funding systems that rely on grants, prizes, and other incentives that delink R&D costs from the price of medical technologies, (e) the need for countries to adopt, protect, and fully utilise so-called TRIPS public health safeguards, (f) the end to all TRIPS-plus demands in trade agreements or through diplomatic or other political pressures including the suspension and removal of existing measures, and (g) the incorporation and systematic use of all available TRIPS public health safeguards including the more widespread and presumptive use of compulsory licensing and potentially even an end to the patenting of medical products.

From you, we respectfully request four actions:

- First, we request that you make the HLP Report and Recommendations—intact and in full—publicly available as soon as they are released to you so that civil society and other stakeholders can study them and advocate for reforms. Pressure from any Member State to withhold the Report and Recommendations should be resisted.
- Second, we request that you will personally urge UN Member States to consider and implement bold solutions to the global medical research and development and access crisis that we face - for example at the forthcoming UN General Assembly.
- Thirdly, we urge that you continue to prioritize human rights and public health concerns as the world explores new ways of ensuring that inventors be properly incentivized and rewarded for the research we need while ensuring universal access to health technologies for all patients who need them, in all countries regardless of their stages of economic development.
- Lastly, we ask you to call on all UN Member States to devise universal access systems that ensure equitable and affordable access to safe, efficacious, and well-adapted health technologies for all health conditions. They should ensure that all people receive the benefits of medical advances.

The deaths of friends, comrades and loved ones remain fresh in our memories. We ask you to join us in making a public international pledge that the world will never again see that sort of devastation and that the difference between life and death will never again be determined by the price of a medicine.

Signed