**REPORT**

**A BETTER HEALTH SYSTEM FOR ALL THANKS TO EFFICIENT PUBLIC INFORMATION**


## Summary

The present study aims to determine the relationship between the right of access to information and access to health services, and to answer the following question: To what extent and how is the right to information a means that allows and promotes the access of citizens to public health services?

Morocco joined the World Health Organization since its independence and subscribes to many agreements, and is committed to establish a health system in order to meet the population's expectations in this field.

Approved by referendum in July 2011, Morocco's new constitution has for the first time in its article 27 recognized the right to access public information (RTI), as well as the right of citizens to health care and medical insurance. It also made public authorities responsible for granting those rights (Article 31).

The present report aims to investigate to what extent those rights are guaranteed, and how the right to information is organized in connection with the implementation of the right to health, based on the international legal instruments on human rights to which Morocco has subscribed, and also based on national law.


## I. International obligations in relation to the right to health and the right to information

I.1. Internationally, the right to health was stated for the first time in the 1946 constitution of the World Health Organization (WHO), that defines it as "a state of complete physical, mental and social well being and not merely the absence of disease or infirmity." (Preamble, paragraph 1).



The 1948 Universal Declaration of Human Rights also mentioned the right to health as part of the right to an adequate standard of living (art. 25).

**There are two general texts that provide for this right:** the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), that remains the most important treaty, and stipulates the measures that the States should take to ensure fully granting this right (Article 12).

**There are also specific texts on the topic**: the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 Convention on the Rights of the Child, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and finally, the 2006 Convention on the Rights of Disabled Persons.

**An international doctrine related to the right to health has been developed** by the Committee on Economic, Social and Cultural Rights (CESCR) that adopted, in the year

2000, the General Comment No. 14/2000 entitled "The right to the highest attainable standard of health", through which it interprets Article 12 of the ICESCR. In particular, it defines the content and scope of the right to health as stipulated in Article 12 of the ICESCR.

### I.2. The right to information in international law

The right to information is established as such in three main international legal instruments:

- The 1948 Universal Declaration of Human Rights (Article 19): This is the first text that recognizes the right to information, placing it in the perspective of freedom of opinion and expression.

- The 1996 International Covenant on Civil and Political Rights (ICCPR) (Article 19) that refers more accurately to the right to information and provides a list of exceptions.

- The 2003 United Nations Convention against Corruption devotes two articles to the right to information (10 and 13) from the perspective of the fight against corruption and the promotion of transparency in public administration.

**A doctrine has also been developed in this regard** by the Human Rights Committee in its General Comment No. 34 on Article 19 of the ICCPR. This doctrine defines the content and scope of the right of access to information and the means of its implementation.

### I.3. The relationship between the right to health and the right to information in international law

The relationship between the right to health and the right to information, in the sense that the latter promotes, strengthens and improves the populations' access to health, has been established since 1946 in the WHO Constitution. It was since then reaffirmed in various general and specific international instruments.

**The relationship between the two rights in the WHO constitution:**

In a paragraph that often goes unnoticed, the Preamble of the Constitution of WHO expressed in brief and meaningful terms the role of information in improving health in paragraph 9: " Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.

**The 1966 ICCPR (Article 7):**

From a lesser extent but significant perspective, the ICCPR is the first international instrument to establish the principle of "informed consent", which is to inform any person before submitting them to medical or scientific experimentation.

**The international conventions specific to certain groups**

- First, the 1979 Convention on the Elimination of All Forms of Discrimination against Women that makes the right to information a corollary of the right to health in three cases: in terms of education, concerning women in rural areas and in marriage and family relations.

- Second, the 1989 Convention on the Rights of the Child recognizes the child's right to "seek, receive and impart information" (Article 13) in general, and the right to information in the field of health.

## II. The right to health and the right to information in Morocco

### II.1. The recognition of the right to health

The organization of health as a public health service in Morocco has its roots in the reforms introduced by the French protectorate. It is the Dahir of March 15, 1926 that transformed the service of health and sanitation into a standalone service, which makes of it the first legal act that links health service to the Moroccan government under the Protectorate. It will be cited in the first regulations enacted in August 1956 that organized the services of the Ministry of Health after independence. On May 14 of he same year, Morocco joined the WHO.

- **The major stages of the creation of a national health system**

***The first national conference on health, April 1959:***

The guiding principles of health policy in Morocco were laid down on the occasion of the First National Conference on Health. Those principles are: "The health of the nation lies with the State"; "The Ministry of Public Health to ensure the system's design and implementation." These major principles underlying the national health system have been put in practice in different economic and social development plans adopted since then until 1980.

**The second stage: the development of primary health care: 1981-1994**

The starting point of the second phase consists of Morocco's subscription to the Declaration of Alma-Ata on primary health care in 1978. The policy of primary health care became a national priority and was detailed on the occasion of the adoption of the Development Plan 1981-1985

**The third stage began in 1994**

The third stage is characterized by the restructuring of the Ministry of Health and the beginning of the reform of hospitals. New central directorates were created for hospitals, medicines and regulation. On the other hand, the reform process during this period resulted in launching the establishment of basic medical coverage.

**Basic medical coverage as a means of implementing the right to health (2002)**

In principle, basic medical coverage aims to ensure universal access to health care. It is therefore a tool for implementing the right to health. On the technical level, it is a response to the problem of health care funding, which was the subject of a specific reflection in the national symposium on health in Morocco in 1992.

The reform of basic medical coverage resulted in the enactment of Law No. 65-00 of October 3, 2002. The generalization of the Basic Medical Assistance Plan (RAMED) was officially launched in March 2012.

**The Framework Law No. 34-09 on the health system and healthcare offer (2011)**

In the history of health legislation in Morocco, the framework law No. 34-09 is the first of its kind. It sets out the fundamental principles and objectives of the State's action in the sector of health, and of the organization of the health system. Article 1 (paragraph 2) states that the right to the protection of health is a State's responsibility. The law also provides a definition of the health system as a set of interrelated and complementary items, largely in line with the conception of the WHO.

**The right to health care in the new constitution**

The constitution of July 2011 provided for the right "to health care" and "medical coverage" for the first time and very clearly (art. 31, § 1 and 2). Article 31 considers the right to health care a global right, and attaches health determinants to it. Thus, the same article also makes the authorities responsible to facilitate benefiting from other rights such as the right to education, decent housing, employment, access to water and a healthy environment.

**The health sector strategy: 2012-2016**

The health sector strategy 2012-2016 reflects the government program in the specific field of health, as prepared by the government appointed under the Constitution of 2011. In its preface, the document "Health Sector Strategy 2012-2016 "announces that this comes as part of the political and social changes experienced by Morocco, which requires adopting a new approach based on human rights and health democracy, and thus giving a sectoral nature to the provisions of the new constitution, in particular those relating to the rights of access to health care and medical coverage.

**Ongoing reforms: Towards a National Health Charter (2013)**

Fifty-four years after the first national conference on health held in 1959, a second conference was organized in July 2013 by the Ministry of Health. The announced overall objective of the conference was to design a reform to address existing gaps and meet new needs in the field of health.

- **The organization of the health system and healthcare offer in Morocco**

The healthcare offer, sometimes called the care system, refers to the mechanism devoted to the management of diseases. In this sense, the health care offer is a subsystem of the health system. The health care offer has a mixed nature and has brought together the public and private sectors long before this situation was clearly provided for by the Framework Law No. 39-04 on the health system and healthcare offer. This mixing element is reflected in the structure of the system.

**General structure of the health system**

This paragraph concerns more precisely the institutional components of the health system. In this context, the national health system consists of four actors:

- The public sector including the Ministry of Health, the health service within the Royal Armed Forces, municipal health offices;

- The private sector: doctors, dentists, pharmacists, opticians and technicians, paramedics (nurses and others);

- The mutual services sector (CNOS, CNSS);

- The informal sector of traditional medicine (healers, qabla, herbalists, etc.).

**The healthcare offer by the Ministry of Health**

The Ministry of Health is the major player in the health field. In the context of healthcare offer, the Ministry gradually put in place a management system based on the fundamentals established by the healthcare distribution map. The Framework Law No. 39-04 formalized the existence of the healthcare distribution map and established the regional pattern of healthcare offer. The healthcare map defines the national and regional levels, the components of the offer, including: - the types of infrastructure and health structures; - The standards and procedures for their establishment). The map is laid down based on the overall analysis of the existing healthcare offer, geo-demographic and epidemiological data, and depending on the medical technological progress.

Currently, the Ministry's offer of public healthcare consists of two main networks, in addition to the laboratory network:

- The outpatient action network, that is to say with no hospitalization, includes all basic healthcare facilities that provide primary health care. They are the closest to the population and include rural and urban health care facilities.

- The hospital network: there are general and specialized hospitals. They can be classified according to their scope and level of services, ranging from the basis as follows: Level 1: local general hospitals or provincial or prefectural general or specialized hospitals; Level 2: General or specialized regional hospitals; Level 3: University Hospitals.

**II.2. The recognition of the right to access to information in Morocco**

In a move long sought by many components of Moroccan civil society, the right of access to information was finally provided for by the Constitution of 2011. Article 27 of the Constitution establishes the principle and refers to the law for the modalities and implementation conditions.

Article 27 of the Constitution is rather short; it establishes the principle of the right of access to information, determines the agencies involved, provides general guidelines for the establishment of exceptions, and refers to a law for the remaining aspects.

Exceptions to the right of access to information are established to ensure the protection of all information that concern national defense, the internal and external security of the State, as well as the privacy of individuals, to prevent the infringement of rights and freedoms provided for by the Constitution and to protect sources and areas specifically determined by law.

On March 26, 2013, a draft law on the right to access information was made public. On June 13 of the same year, the Ministry of Civil Service and the Modernization of Public Administration organized a national conference on "The Right of Access to Information: A Lever for Participatory Democracy." The objective of the symposium was to gather the opinions and conclusions of the participants to develop a law on access to information. On June 21, 2014, the same ministry organized a national symposium on "A Comprehensive Reform of the General Regulations of Civil Service." Among the recommendations of this event was to "quickly enact the RTI law, without prejudice to

the obligation of professional discretion, the scope of which must be clearly and precisely determined."

Finally, on January 23, 2014, a draft law on the RTI was discussed by the Government Council, but its adoption was postponed. On July 31, 2014, the text of the bill on access to information was adopted by the Government Council.

A first analysis of this project shows that the exceptions are broadly expressed, which may induce a restrictive interpretation of the right to information. Furthermore, requests for information are reserved for individuals who prove a direct interest and must also specify the use they intend to do with the requested information. Finally, the text makes liable to criminal sanctions the people who made use of the information for a purpose other than the one specified in their applications. The project does not provide for the creation of an independent body implementing the law and gives the Mediator jurisdiction to decide any potential appeals.

## III. The organization of access to information within the national health system

This organization takes three forms of different natures and scopes. First, there is an information system for decision-makers, regarded as a decision support system. Then, the Ministry of Health offers the public an amount of information as part of the proactive disclosure of information. Finally, to some extent, the laws and regulations organize information related to patients and users.

### III.1. Information at the service of decision-makers: the National Health Information System (Système national d'information sanitaire SNIS)

Although a national health information system has existed in Morocco for thirty years (since 1980), there was no law or regulation that formalized its existence. The expression "national health information system" appeared for the first time in the Framework Law No. 34-09 of July 2, 2011 on health system and health care offer.

The functioning of the SNIS takes place through many structures organized in a pyramidal fashion: Central (the Ministry of Health), intermediate (prefectural, provincial, regional) and local (health centers, hospitals, mobile teams). Health information is collected locally before being transmitted to the central level, that is to say, the Ministry of Health, more specifically the structures that, within it, are mandated to centralize information.



The role of central services in the collection and processing of health information was not expressed explicitly until 1994 with the reform of the structures of the Ministry of Health. As can be seen, it took almost 40 years for the central services of the Ministry of Health to be refurbished and adapted to take into account the importance of the mission of collecting and processing health information.

The mission of the SNIS is to collect daily information that is made available to decision-makers and managers at all levels of the health system. This is useful for planning and budgeting, to improve the quality and effective response to consumer needs. The SNIS has been subject to several reviews and reforms. First, on the occasion of the National Conference of 2003, where the main objective was to establish the guidelines of the SNIS. Then, on the occasion of the 2nd national conference on health held in 2013 to develop a national health charter.

### III.2. Proactive disclosure of information in the health sector

#### National legislation related to providing health information to the public

The mission "of information, education and communication" in relation to the various health programs didn't appear clearly until 1994 in the decree on the functions and organization of the Ministry of Public Health. It was part of the responsibilities of the division of information, education and communication within the population department.

Thereafter, the 2010 internal regulations of hospitals charged the director of the healthcare center or the hospital, among others, to develop internal and external communication strategies for the hospital, and support the various departments in establishing their specific communication plans.

Finally, the framework law of July 2, 2011 makes the mission assigned to the State to "develop information, education and communication campaigns" one of health prevention tools (Article 4). The same law provides for the possibility for health institutions in the public and private sectors to develop partnerships with professional organizations and associations to contribute to health actions, "including those relating to information, health education and awareness "(Article 13).

#### The measures of proactive disclosure of information by the Ministry of Health

The main tool used in this regard is the Ministry's website, as well as the sub-sites that it redirects to. The Ministry's website also redirects to general governmental websites that compile inter-sectoral information. Other tools are used like information, communication and awareness campaigns.

#### The website of the Ministry of Health

The address of the Ministry of Health's website (http://www.sante.gov.ma/) provides access to the French version of the site. The homepage includes a link to the Arabic version, but the page is not found: the site's Arabic version does not exist, which greatly limits access to information for users of the Arabic language. On the other hand, the French website itself does not include all the required information. Old information are not archived, some information are not updated or are incomplete; others are repeated.

The information available on the Ministry of Health's website can be described synthetically using the following main topics: *the organization and functions of the ministry, legislative and regulatory frameworks, strategy and action plans, healthcare offer* (healthcare distribution map - a well organized and well documented sub-site - and "health figures" which provides data and indicators on the production and performance of public health facilities as well as national health care offer), the "*national health accounts* "(information on the funding of health*), specific drug information, national surveys, tenders for public procurement.*

### III.2.2. Additional information and communication means used by the Ministry of Health

The Ministry of Health uses a variety of information, communication and training means. They either concern specific themes that target the general public (smoking, for example) or themes targeting particular population groups (women, youth). But in

general, these tools are inserted within the health ministry programs. They do not have a general character.

As far as form is concerned, the tools of information and communication consist of information campaigns, reports, workshops, guides, audio and video spots and the distribution of information materials.

There is no public activity report that provides information about the tools used in a given year. However, we obtained from the relevant departments in the Ministry of Health various documents relating to this subject in the form of compact discs. Note, however, that with the exception of the information broadcast on radio or television channels, or those issued directly to the people in rural areas by traveling nurses, everything else is done in the courses created for this purpose, especially for youth and women. Teaching aids are used in these lessons by the supervising staff. Finally, there is no generalized information for the general public in the media for example.

### III.3. Information provided to patients and service users

It covers three area: informing patients of the care provided, the management and protection of personal information about the patient's health condition, and the information of organ donors and blood donors.

- **The right of patients to information about health care**

There is no law or regulations in Moroccan that define and organize precisely and in details the patient's right to be informed before any medical action or procedure on their condition, treatment or prevention actions, their usefulness, their possible urgency, consequences, the frequent or serious risks normally predictable, possible alternatives, or the foreseeable consequences of refusal on the part of the patient to consent to treatment.

Under the laws currently in force, this question is implicitly addressed through provisions on the patient's prior consent to care, mentioned in two main texts: the 1953 code of ethics for physicians, and the 2010 rules of procedure for hospitals.

Prior consent to treatment, however, is better organized in the 2010 bylaws of the hospitals that concern the public sector, although they remain silent on the specific terms of patient information. On the other hand, the internal regulations of hospitals devoted one article to patient information.



- **The organization, management and protection of information on the patient's health condition**

It is in a legal text specific to the mentally ill that one can find specific provisions on the obligation to keep an individual record for each patient, as well as the items that the patient's file must contain. That text is the Dahir of April 30, 1959 relating to mental illness.

It was only after the 1995 reform of hospitals and the introduction of the information and hospital management system that the implementation of patient records occurred, not on a legislative basis but based on an internal working document for the Ministry of Health called "the normative framework of hospital information and management system." This document specifies the contents of patient records and provides different information to be collected in standard forms. The 2010 rules of procedure of hospitals

provide for the rules of this file's management, access and archiving. In practical terms, the reception and admission service, managed by a doctor who deals with activities related to the patient's record.

The Internal Regulation of Hospitals considers that the hospitalization records are the property of the hospital, which ensures their preservation. The Internal Regulation of Hospitals does not specify the period during which the hospitalization records are kept in the hospital archives. The question remains whether the file is destroyed after a certain period of time or if it is transferred to the Archives of Morocco, under the Archives Act of November 30, 2007.

According to Article 61 of the Internal Regulation of Hospitals, "the hospitalization records can be accessed by the patient or their legal representative, their heirs in case of death, via their treating physician outside the hospital. The consultation of the file by the patient or their representative physician takes place on site in the presence of the attending clinician.

In addition to on-site consultation, the patient may request, through their hospital attending doctor, a copy of the file and / or a detailed account of their medical care on the basis of a request presented by the patient to the hospital director (Article 61, paragraph 3).

The medical record is protected by professional confidentiality: all that was heard by and revealed to a health professional cannot be disclosed to anyone except as provided by law.

The 1953 Code of Medical Ethics introduced this rule. But it is also provided for by a more general law, article 446, paragraph 1 of the Criminal Code, and applies to all health professionals, regardless of whether the healthcare that they provide takes place in the city or the hospital.

Legislative exceptions to medical confidentiality exist. They are based either on the order of law or with permission of the law. The first is mandatory, the second is optional.

The patient records can be accessed or disclosed to other parties for purposes of general interest (consultation by health professionals for scientific interest), or under special procedures (consultation and communication in the context of the compulsory health insurance for control for reimbursement of medical benefits).

- **Information regarding certain users of the public health service: organ and blood donors**

Given the importance of those donations, the legislator has strictly regulated and imposed the need to obtain the consent of the parties and their information.

***Organ donation***: The donor must be fully informed of the risks and potential consequences associated with donating. The information issued by the doctors responsible for the operation covers all foreseeable consequences of physical and psychological nature, as well as the potential impact of the operation on the donor at the personal, family or professional levels. The information also focuses on the results that can be expected in the recipient.

***Blood donation***: blood donation is voluntary. The donor must freely and consciously express their consent.

On the other hand, anyone wishing to donate blood must be informed that the blood that is collected will be biological analyzed, and that they will be informed of the analysis results (Article 4, paragraph 2 of the Law).

## Recommendations

I. **Regarding the implementation of the right to health:**

1. Developing and enacting a general Code of health that establishes the rights and obligations of all parties, instead of a national health charter, that would be just a sum of principles. This code should:

   • be of general scope and applicable in the public and private sectors, and even in the intervention of local authorities (municipal hygiene offices) and the Ministry of Agriculture (the National Health Security Office of Food Products: ONSSA)
   • collect, harmonize and update all laws and regulations relating to public health.

2. Creating a National Health Agency, as an independent administrative authority, to be responsible for the regulation of the entire sector (public, private, basic health coverage), and its monitoring and evaluation. It must provide a public annual report and submit it to the government and the parliament.
3. Implementing the provisions of the Framework Law No. 34-09 relating to the health system and health care offer that are likely to strengthen the right to health, including:

   • The contribution of local authorities, associations and professional organizations with the State in achieving the objectives and health actions (art. 5);
   • The distribution of healthcare across the country in a balanced and equitable way;
   • The establishment of a legal and institutional system that allows the implementation of the collaboration between health institutions of the public and private sectors and associations as well as any component of civil society to encourage their contribution to health actions;
   • Laying the foundations for participatory management of the health sector through the establishment of health consultation bodies. For this purpose, it is necessary to put in place the consultation and participation bodies provided for by the Framework Law, and allowing the participation of citizens in the management of health institutions through decision making, follow-up and evaluation. This implies the necessity of a better-recognized and implemented right to information.

4. Expanding basic health coverage to other categories of the population that do not currently benefit from compulsory health insurance (AMO).

## II. Regarding the implementation of the right to information

**1.** Enacting a general law on access to information that is not restrictive, that allows to institute proceedings before a specialized body in order to create interpretive jurisprudence, and provides for the adaptation of all previous laws relating to specific areas, such as health.

**2.** Developing a strategy and actions for the implementation of the right to information by various administrations, and training and raising the awareness of the staff in charge of providing the information.

**3.** Providing the means to involve associations and any component of civil society in actions related to information, including health education and health awareness.

## III. The right to information and its relationship with health information:

### 1. General actions to be implemented by the ministry:

- Creating the National Commission on the determinants of health, including the right to information and communication, under the 2012-2016 health sector strategy;
- Enacting a law on the National Health Information System (Système national d'information sanitaire SNIS), which currently operates with internal documents that do not have force of law;
- Organizing wider information for users and patients regarding the care system and the necessity for compliance with this system and the health distribution map.

### 2. Regarding informing patients about their medical condition:

- Developing the current provisions of the Internal Regulations of hospitals or enacting a special law on informing patients about their medical condition. And for this purpose:
  - Regulating in a precise and detailed manner all the information that must be provided to the patient and their family members, or the person considered reliable;
  - Making patient information a patient's right and a duty of the health professional;
  - The provisions relating to patient information must be the same in the public and private sectors.
- Extending the notion of information for patients and users in a general manner and within hospitals by informing them about the quality of services.
- Reforming the legislation of some professions, including the physicians' code of ethics dating back to 1953, and the codes of other medical professions that include provisions modeled after the code of 1953, in order to organize patient information on their medical condition in a more accurate and detailed way;
- Enacting a code of ethics for nurses and clarifying their duty and limits in terms of informing patients on their medical condition.

**3. The medical file/hospitalization record**

- Organizing precisely and in detail the information that must be kept in the medical file or the hospitalization record in both the public and private sectors, by reviewing the legislative texts thereto, including texts relating to various medical professions (namely rules of procedure in hospitals and the codes of ethics of medical professions);
- Defining the timeframe of the retention of medical files or hospitalization records, of their possible destruction or their transfer to the institution in charge of public archives;
- Updating the 1959 Law on Mental Illnesses to take into consideration the new rules governing the patient's records.

**4. Regarding the proactive disclosure of information:**

- **The website of the Ministry of Health:**
  - Creating an Arabic version of the Ministry's website;
  - Adding a section that provides access to information in alphabetical order, in order to make navigation easier;
  - Creating an archive section in the website: the website user cannot find anything related to what was done by previous governments, for example;
  - Introducing in the website a list of all the documents made by the Ministry of Health, and indicating the procedure to consult or to save a copy (this would be in application of a general law on the right to access information);
  - Creating a section on the rights of health care users, that summarizes the regulations in this regard;
  - Publishing information online relating to the regional public health directorates, or creating websites dedicated to those directorates;
  - Developing a master plan for the websites of hospitals in order to unify data, keeping a special section for the patient;
  - Publishing all legislative and regulatory texts related to health, including the decisions of the Minister of Health that are very important for understanding the functioning of the sector;
  - Updating health information, including those related to the different seasons of the year;
  - Publishing additional information necessary for the protection of health, for example on lifestyle and eating habits.
- **Additional means of proactive disclosure of health information**
  - Ensuring wide dissemination of information to the public through public media in a systematic manner;
  - Establishing partnerships with private media for disclosure of health information;
  - Involving associations in proactive disclosure of health information.



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