Health as a fundamental right - a gender perspective

Carmen Moldovan

Alexandru Ioan Cuza University of Iasi (Romania)

Main points

- What is the right to health?
- International legal instruments
- Inclusive right
- Obligations and responsibilities of States and other entities
- Gender and non-discrimination principle (equality principle)

What is the right to health?

- *The right to the enjoyment of the **highest attainable standard** of physical and mental health*
- health is "**a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity**"
- "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

(Preamble, WHO Constitution, 1946)

Fundamental right

- The Declaration of Alma-Ata, adopted at the Alma-Ata Conference of 1978 on Primary Health Care (PHC), affirmed **health as a fundamental human right:**
- *The Conference strongly reaffirms that **health,** which is a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity, **is a fundamental human right** and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.*

Universal Declaration of Human Rights

Article 25 (1)

- Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (Article 25 (1) Universal Declaration of Human Rights)

- Relevant for all states

ICESCR

(Article 12)

- Article 12

1. 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.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

International Convention on the Elimination of All Forms of Racial Discrimination of 1965

- Art. 5 (e) (Iv)
- *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to **prohibit and to eliminate racial discrimination** in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*
- *(e) Economic, social and cultural rights, in particular:*
- *(iv) **The right to public health, medical** care, social security and social services;*

Convention on the Elimination of All Forms of Discrimination against Women of 1979

Article 11

1. States Parties shall take all appropriate measures to eliminate **discrimination against women** in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(f) The right to **protection of health** and to safety in working conditions, including the safeguarding of the function of reproduction.

Article 12

1. States Parties shall take all appropriate **measures to eliminate discrimination against women in the field of health care** in order to ensure, on a basis of equality of men and women, **access to health care services,** including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall **ensure to women appropriate services in connection** with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Convention on the Rights of the Child of 1989

Article 24

1. States Parties recognize the right of the child to the enjoyment of **the highest attainable standard of health** and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To ensure appropriate pre-natal and post-natal health care for mothers;

(b) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(c) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing **traditional practices prejudicial to the health of children.**

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

EU Charter of Fundamental Rights

- Article 35 - **Health care**

Everyone has the right of **access to preventive health care** and the right to benefit **from medical treatment** under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

UN SGD (UN 2030 Agenda)

Goal no. 3

UN SDG Goal no. 3 Good health and well-being

- **Ensure healthy lives and promote well – being for all at all ages**
- **Targets** include:
  - reducing maternal mortality;
  - ending preventable child deaths;
  - ending or reducing AIDS other diseases;
  - universal health coverage, affordable essential medicines, sexual and reproductive health care;
  - vaccine research, and access to medicines.

Targets

3.1 By 2030, reduce the global **maternal mortality** ratio to less than 70 per 100,000 live births

3.2 By 2030, **end preventable deaths of newborns and children** under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births

3.3 By 2030, **end the epidemics of AIDS, tuberculosis, malaria** and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases

3.4 By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being

3.5 Strengthen the prevention and treatment of **substance abuse,** including **narcotic drug abuse and harmful use of alcohol**

3.6 By **2020, halve the number of global deaths and injuries from road traffic accidents**

3.7 By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes

3.8 Achieve **universal health coverage**, including financial risk protection, access to **quality essential health-care services** and access to safe, effective, quality and affordable essential medicines and vaccines for all

3.9 By 2030, substantially reduce the number of deaths and illnesses from **hazardous chemicals and air, water and soil pollution** and contamination

Targets

3.a Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate

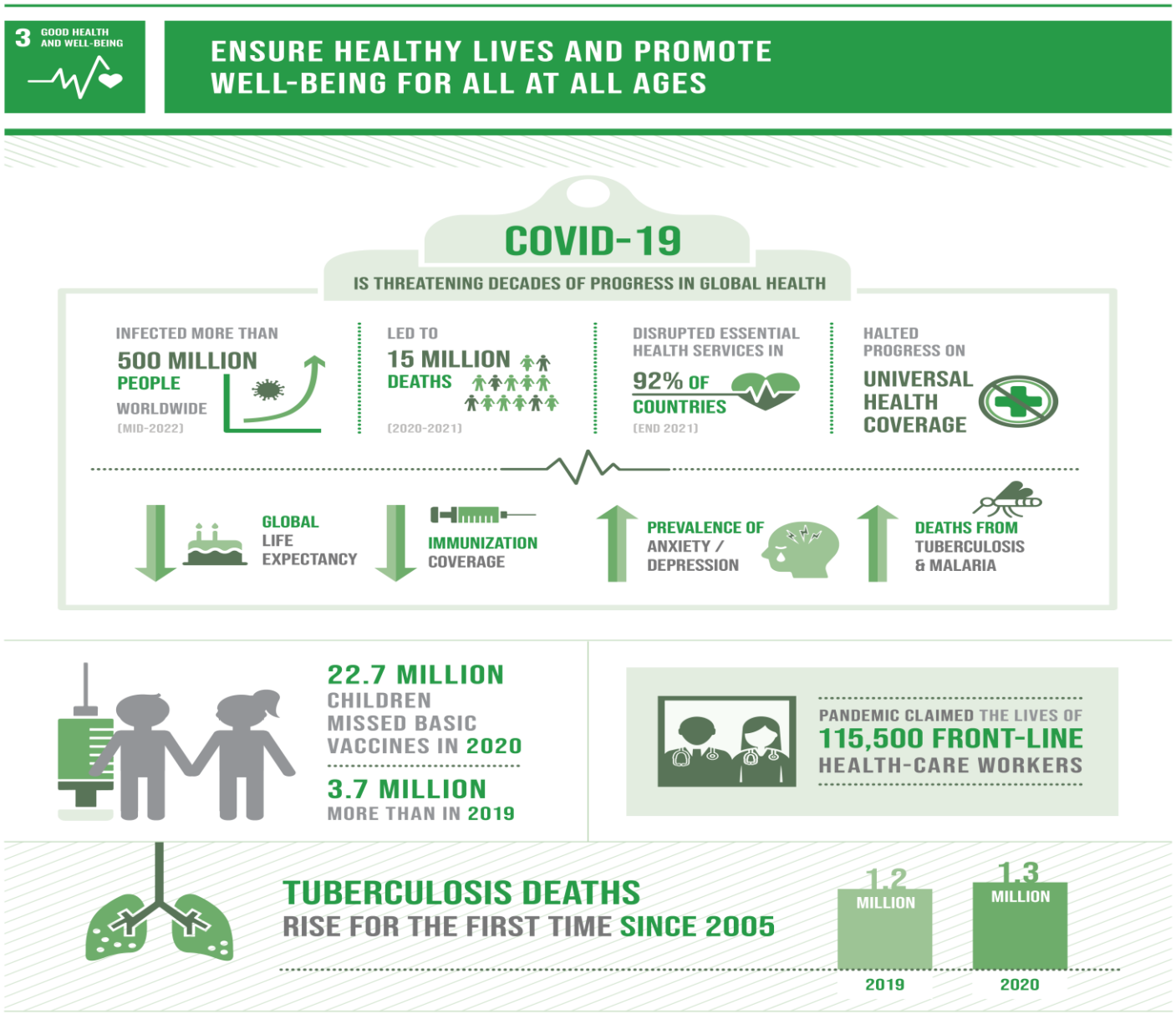
3.b Support the **research and development of vaccines** and medicines for the communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health [2001], which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all

3.c Substantially increase **health financing** and the **recruitment, development, training and retention** of the health workforce in developing countries, especially in least developed countries and small island developing States

3.d Strengthen the capacity of all countries, in particular developing countries, for early warning, risk reduction and management of national and global health risks

COVID -19

(The Sustainable Development Goals Report-2022)

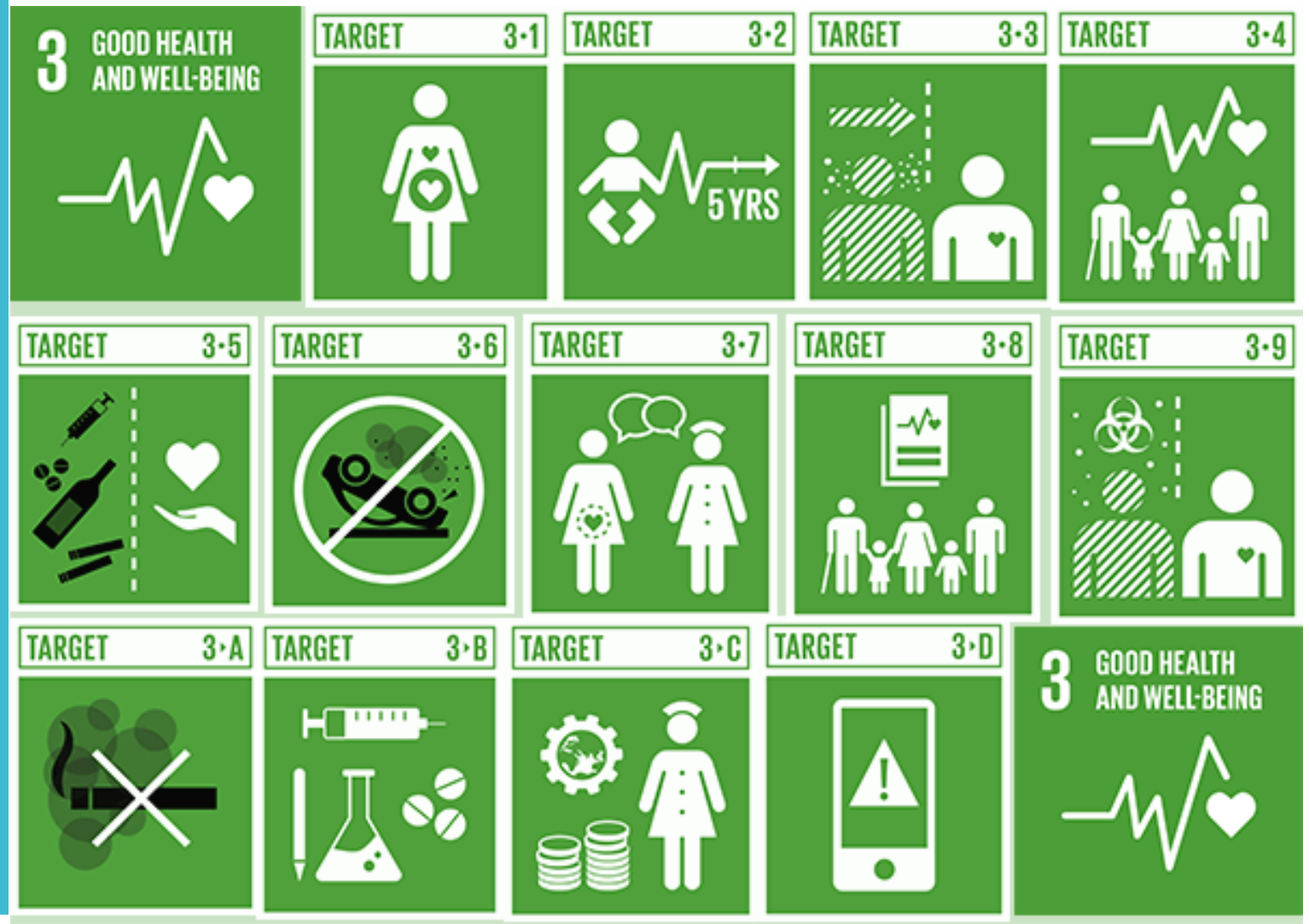


Special Rapporteur on the right to health

- **the mandate of the Special Rapporteur on the right to physical and mental health** was originally established by the Commission on Human Rights in April 2002 by resolution 2002/31.
- The mandate was endorsed and extended by the Human Rights Council with resolutions 6/29 of 14 December 2007, and was most recently renewed by resolution 42/16 of 7 October 2019.

UN SDG Goal no. 3

UN SDG Goal no. 3



Related human rights

- **Right to life** [UDHR art. 3; ICCPR art. 6], particularly of women [CEDAW art. 12] and children [CRC art. 6]
- **Right to health** [UDHR art. 25; ICESCR art. 12], particularly of women [CEDAW art. 12]; and children [CRC art. 24]
- **Special protection for mothers and children** [ICESCR art. 10]
- **Right to enjoy the benefits of scientific progress and its application** [UDHR art. 27; ICESCR art. 15(1)(b)]
- **International cooperation** [UDHR art. 28, DRtD arts. 3-4], particularly in relation to the right to health and children's rights [ICESCR art. 2(1); CRC art. 4]

An inclusive right

- Usually associated with access to health care and the building of hospitals.
- It extends further and includes a wide range of factors that can help us lead a healthy life.
- The Committee on Economic, Social and Cultural Rights (the body responsible for monitoring the ICESCR) calls these the "**underlying determinants of health".** They include:

  Ø Safe drinking water and adequate sanitation;

  Ø Safe food;

  Ø Adequate nutrition and housing;

  Ø Healthy working and environmental conditions;

  Ø Health-related education and information;

  Ø **Gender equality.**

- **CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)**

(Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000)

General Comment no. 14

11. The Committee interprets the right to health, as defined in article 12.1, ***as an inclusive right extending*** *not only to timely and appropriate health care but also to the underlying determinants of health, such as* ***access to safe and potable water*** *and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.*

General Comment no. 14

- *1. Health is **a fundamental human right indispensable** for the exercise of other human rights. Every human being is entitled to the enjoyment of **the highest attainable standard of health conducive to living a life in dignity.** The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable.*

(EX: the principle of **non-discrimination** in relation to health facilities, goods and services is legally enforceable in numerous national jurisdictions)

- the right to health embraces **a wide range of socio-economic factors** that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

(para 4)

Is there a right to be healthy?

- *8. **The right to health is not to be understood as a right to be healthy.** The right to health contains both **freedoms and entitlements.***

The **freedoms** include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.

By contrast, **the entitlements** include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

What is *the highest attainable standard of health ?*

*9. The notion of "**the highest attainable standard of health**" in article 12.1 takes into account **both the individual's biological and socio-economic preconditions and a State's available resources**. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; **in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health**.*

Thus, **genetic factors, individual susceptibility to ill health** and the **adoption of unhealthy or risky lifestyles** may play an important role with respect to an individual's health.

Consequently, the right to health must be understood as a right to the enjoyment of a **variety of facilities, goods, services and conditions** necessary for the realization of the highest attainable standard of health.

Interrelated and essential elements

- Their precise application will depend on the conditions prevailing in a particular State party:
- *(a) Availability.* Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party.
  - They will include, the underlying determinants of health, such as **safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs**;

Interrelated and essential elements

(*b) Accessibility.* Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.

Accessibility has 4 overlapping dimensions:

- Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;
- Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities;

- Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households;
- Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality;

- *(c) Acceptability.* All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned;
- *(d) Quality.* As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality.

This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

Freedoms contained

- the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.

Entitlements

Ø The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;

Ø The right to prevention, treatment and control of diseases;

Ø Access to essential medicines;

Ø Maternal, child and reproductive health;

Ø Equal and timely access to basic health services;

Ø The provision of health-related education and information;

Ø Participation of the population in health-related decision making at the national and community levels.

Non-discrimination principle

- Health services, goods and facilities must be provided to all without any discrimination.
- Non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health

Common misconceptions /Clarifications

- **The right to health is NOT the same as the right to be healthy** (States cannot guarantee good health; influence of several factors; there is no unconditional right of being healthy)
- **The right to health is NOT only a programmatic goal to be attained in the long term**
  - States must make every possible effort, within available resources, to realize the right to health and to take steps in that direction without delay.
  - Notwithstanding resource constraints, some obligations have **an immediate effect, such as the undertaking to guarantee the right to health in a non-discriminatory manner,** to develop specific legislation and plans of action, or other similar steps towards the full realization of this right, as is the case with any other human right.
  - States also have to ensure a minimum level of access to the essential material components of the right to health, such as the provision of essential drugs and maternal and child health services.

- **A country's difficult financial situation does NOT absolve it from having to take action to realize the right to health**.

States must guarantee the right to health to the maximum of their available resources, even if these are tight.

- States must move towards meeting their obligations to **respect, protect** and **fulfil**

The obligation **to respect**

- requires States to refrain from interfering directly or indirectly with the right to health.
- EX: States should refrain from denying or limiting access to health-care services; from marketing unsafe drugs; from imposing discriminatory practices relating to women's health status and needs; from limiting access to contraceptives and other means of maintaining sexual and reproductive health; from withholding, censoring or misrepresenting health information; and from infringing on the right to privacy (e.g., of persons living with HIV/AIDS).

The obligation to **protect**

- requires States to prevent third parties from interfering with the right to health.

States should **adopt legislation or other measures** to ensure that private actors conform with human rights standards when providing health care or other services (such as regulating the composition of food products);

- control the marketing of medical equipment and medicines by private actors;
- ensure that privatization does not constitute a threat to the availability, accessibility, acceptability and quality of health-care facilities, goods and services;
- protect individuals from acts by third parties that may be harmful to their right to health—e.g., prevent women from undergoing harmful traditional practices or third parties from coercing them to do so (by, for example, enacting laws that specifically prohibit female genital mutilation);

The obligation to **fulfil**

- requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to health.
- EX:
  - adopt a national health policy or a national health plan covering the public and private sectors;
  - ensure the provision of health care, including immunization programmes against infectious diseases and services designed to minimize and prevent further disabilities;
  - ensure equal access for all to the underlying determinants of health, such as safe and nutritious food, sanitation and clean water;
  - ensure that public health infrastructures provide for sexual and reproductive services and that doctors and other medical staff are sufficient and properly trained;
  - and provide information and counselling on health-related issues, such as HIV/AIDS, domestic violence or the abuse of alcohol, drugs and other harmful substances.

The link between the right to health and other human rights

- **Human rights are interdependent, indivisible and interrelated**.
- violating the right to health may often impair the enjoyment of other human rights, such as the rights to education or work, and vice versa.
- the right to health is dependent on, and contributes to, the realization of many other human rights:
  - the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications.

The right to water

- World Health Organization:
- Ill health is associated with the ingestion of or contact with unsafe water, lack of clean water (linked to inadequate hygiene), lack of sanitation, and poor management of water resources and systems, including in agriculture.
- Most diarrhoeal disease in the world is attributable to unsafe water, sanitation and hygiene. In 2002, diarrhoea attributable to these three factors caused approximately 2.7 per cent of deaths (1.5 million) worldwide

(WHO, Water, sanitation and Hygiene, Geneva 2007)

Principle of non-discrimination and gender equality

- **Discrimination= any distinction, exclusion or restriction** made on the basis of various grounds which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms. It is linked to the marginalization of specific population groups and is generally at the root of fundamental structural inequalities in society
- traditionally discriminated and marginalized groups often bear a disproportionate share of health problems.

EX: in some societies, ethnic minority groups and indigenous peoples enjoy fewer health services, receive less health information and are less likely to have adequate housing and safe drinking water, and their children have a higher mortality rate and suffer more severe malnutrition than the general population.

EX: in many places indigenous women receive fewer health and reproductive services and information, and are more vulnerable to physical and sexual violence than the general population.

Grounds of discrimination

- non-exhaustive grounds of discrimination: race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
  - According to the Committee on Economic, Social and Cultural Rights, "other status" may include health status (e.g., HIV/AIDS) or sexual orientation.
  - States have an obligation to prohibit and eliminate discrimination on all grounds and ensure equality to all in relation to access to health care and the underlying determinants of health.
  - The goal: is to achieve equality

Gender definition

- Defined **difference between men and women based on culturally and socially constructed mores, politics, and affairs.**
- Time and location give rise to a variety of local definitions. Contrasts to what is defined as the biological sex of a living creature.
- Article 7(3) of the Rome Statute:

"For the purposes of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above."

Gender terms used to classify policies, programmes or activities (WHO Gender Responsive Scale)

Gender unequal: Policies, programmes or activities that perpetuate gender inequalities by reinforcing unbalanced norms, roles and relations for women and men.

They do this by either **privileging men over women,** or vice versa, and tend to ensure**that one sex will have more rights and opportunities** than the other.

Gender blind: Policies, programmes or activities that ignore gender norms, roles and relations, and tend to reinforce gender-based discrimination. Also referred to as gender neutral policies, these tend to ignore differences in opportunities and allocation of resources for women and men.

Gender sensitive: Indicates gender awareness, although no remedial action is developed.

Gender specific: Policies, programmes or activities that take account of women's and men's different roles, norms and responsibilities as well as their specific needs within a programme or policy. Such programmes make it easier for women and men to fulfil duties that are ascribed to them on the basis of their gender roles – without necessarily trying to change gender roles.

Gender transformative: Addresses the causes of gender-based health inequities by including ways to transform harmful gender norms, roles and relations. The objective of such programmes is often to promote gender equality and foster progressive changes in power relationships between women and men.

SDG Goal 5

- **SDG 5: Achieve Gender Equality and Empower All Women and Girls**

Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets [of the 2030 Global Agenda]. The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels. . . . The systematic mainstreaming of a gender perspective in the implementation of the Agenda is crucial.

(UN General Assembly)

Targets

- eliminating discrimination and violence against women and girls; valuing unpaid care and domestic work;
- ensuring the full participation of women;
- access to reproductive health care;
- and equal access of women to economic resources.

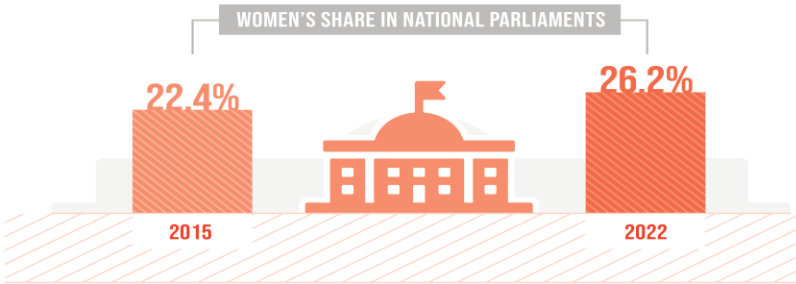
5 GENDER EQUALITY

ACHIEVE GENDER EQUALITY AND EMPOWER ALL WOMEN AND GIRLS

IT WOULD TAKE ANOTHER

40 YEARS

FOR WOMEN AND MEN TO BE REPRESENTED EQUALLY IN NATIONAL POLITICAL LEADERSHIP AT THE CURRENT PACE



GENDER-RESPONSIVE BUDGETING NEEDS TO BE STRENGTHENED

PROPORTION OF COUNTRIES WITH SYSTEMS TO TRACK GENDER-BUDGET ALLOCATIONS (2018-2021)

26% | COMPREHENSIVE SYSTEMS

59% | SOME FEATURES OF A SYSTEM

15% | LACKING MINIMUM ELEMENTS OF SUCH A SYSTEM

WOMEN ACCOUNTED FOR **39%** OF TOTAL EMPLOYMENT IN 2019,

BUT **45%** OF GLOBAL EMPLOYMENT LOSSES IN 2020

MORE THAN 1 IN 4 WOMEN (15+ YEARS)

HAVE BEEN SUBJECTED TO INTIMATE PARTNER VIOLENCE (641 MILLION) AT LEAST ONCE IN THEIR LIFETIME

ONLY **57%** OF WOMEN (15-49 YEARS)

ARE MAKING THEIR OWN INFORMED DECISIONS ON SEX AND REPRODUCTIVE HEALTH CARE

(64 COUNTRIES, 2007-2021)

THE SUSTAINABLE DEVELOPMENT GOALS REPORT 2022: UNSTATS.UN.ORG/SDGS/REPORT/2022/

Targets

- **5.1.** End all forms of discrimination against all women and girls everywhere
- **5.2** Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
- **5.3** Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation
- **5.4** Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate

- 5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life
- 5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences
- **5.a** Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

- **5.b** Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women
- **5.c**Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels