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Questions & Answers on Health and Human Rights

Q.11 What is meant by a rights-based approach to health?

A rights-based approach to health refers to the **processes** of:

- *Using human rights as a framework for health development.*
- *Assessing and addressing the human rights implications of any health policy, programme or legislation.*
- *Making human rights an integral dimension of the design, implementation, monitoring and evaluation of health-related policies and programmes in all spheres, including political, economic and social.*

Substantive elements to apply, within these processes, could be as follows:

- Safeguarding **human dignity**.
- Paying attention to those population groups considered most vulnerable in society.¹ In other words, recognizing and acting upon the characteristics of those affected by health policies, programmes and strategies - children (girls and boys), adolescents, women, and men; indigenous and tribal populations; national, ethnic, religious and linguistic minorities; internally displaced persons; refugees; immigrants and migrants; the elderly; persons with disabilities; prisoners; economically disadvantaged or otherwise marginalized and/or **vulnerable groups**.
- Ensuring health systems are made **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.
- Using a **gender** perspective, recognizing that both biological and sociocultural factors play a significant role in influencing the health of men and women, and that policies and programmes must consciously set out to address these differences.

A rights-based approach to health entails recognizing the individual characteristics of the population groups concerned. In all actions relating to children, for example, the guiding principles of the Convention on the Rights of the Child should be applied. These include:

- The best interests of the child shall be a primary consideration;
- The views of the child shall be given due weight.
- Ensuring **equality and freedom from discrimination**, advertent or inadvertent, in the way health programmes are designed or implemented.
- **Disaggregating** health data to detect underlying discrimination.
- Ensuring free, meaningful, and effective **participation** of beneficiaries of health development policies or programmes in decisionmaking processes which affect them.
- Promoting and protecting the **right to education** and the right to seek, receive and impart **information** and ideas concerning health issues. However, the right to information should not impair the right to **privacy**, which means that personal health data should be treated with confidentiality.

It has been demonstrated that "respect for human rights in the context of HIV/AIDS, mental illness, and physical disability leads to markedly better prevention and treatment. Respect for the dignity and privacy of individuals can facilitate more sensitive and humane care. Stigmatization and discrimination thwart medical and public health efforts to heal people with disease or disability".¹

- Only limiting the exercise or enjoyment of a right by a health policy or programme as a last resort, and only considering this legitimate if each of the provisions reflected in **the Siracusa principles** is met.¹
- Juxtaposing the human rights implications



strong basis for health systems to prioritize the health needs of vulnerable and marginalized population groups. Human rights moves beyond averages and focuses attention on those population groups in society which are considered most vulnerable (e.g. indigenous and tribal populations; refugees and migrants, ethnic, religious, national and racial minorities), as well as putting

- Articulating the concrete government **obligations** to respect, protect and fulfil human rights.
- Identifying **benchmarks and indicators** to ensure monitoring of the progressive realization of rights in the field of health.
- Increasing **transparency** in, and **accountability** for, health as a key consideration at all stages of programme development.
- Incorporating **safeguards** to protect against majoritarian threats upon minorities, migrants and other domestically "unpopular" groups, in order to address power imbalances. For example, by incorporating redress mechanisms in case of impingements on health-related rights.

Q.15 How can human rights support work to strengthen health systems?

Human rights provide a standard against which to evaluate existing health policies and programmes, including highlighting the differential treatment of individual groups of people in, for example, manifestations, frequency and severity of disease, and governmental responses to it. Human rights norms and standards also form a

forward specific human rights which may help guide health policy, programming, and health system processes (e.g. the right of those potentially affected by health policies, strategies and standards to participate in the process in which decisions affecting their health are made).

World Health Report 2000: Framework on Health Systems Performance Assessment

In working towards an evidence-based model of health, WHO developed health system performance indicators in its World Health Report 2000. The fundamental principles underlying these indicators are: to clarify the boundaries of health systems; to assess how health and other systems interact to achieve key social goals; to define and measure health, responsiveness, and fairness in financial contribution; and to show how different policies contribute towards improving health systems performance.(60) In particular with regard to the responsiveness of the health system, human rights norms and standards have been incorporated shaping the definitions of the various domains being measured.

Q.16 What is the relationship between health legislation and human rights law?

Health legislation can be an important vehicle towards ensuring the promotion and protection of the right to health. In the design and review of health legislation, human rights provide a useful tool to determine its effectiveness and appropriateness in line with both human rights and public health goals. In this context, HIV/AIDS has caused many countries to revisit their public health laws, including in relation to quarantine and isolation.⁶¹

Restrictive laws and policies that deliberately focus on certain population groups without sufficient data, epidemiological and otherwise, to support their approach may raise a host of human rights concerns. Two examples in this regard are health policies concerning the involuntary sterilization of women from certain population groups that are justified as necessary for their health and well-being, and sodomy statutes criminalizing same-sex sexual behaviour that are justified as necessary to prevent the spread of HIV/AIDS.⁶²

Government capacity to develop national health policy and legislation that conforms to human rights obligations needs to be strengthened. This includes developing the tools to review health-related laws and policies to determine whether, on their face or application, they violate human rights, and providing the means to rectify any violation which exists.

Q.19 How do human rights principles relate to equity?

Equity means that people's needs, rather than their social privileges, guide the

distribution

of opportunities for well-being.⁶³ This means eliminating disparities in health and in health's major determinants that are systematically associated with underlying social disadvantage within a society. Within the human rights discourse, the principle of equity is increasingly serving as an important nonlegal generic policy term aimed at ensuring fairness. It has been used to embrace policy related issues, such as the accessibility, affordability and acceptability of available health care services. The focused attention on vulnerable and disadvantaged groups in society in international human rights instruments reinforces the principle of equity. Also, at the international level, human rights instruments address equity by encouraging



