Submission to the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the Inter-American Human Rights Commission

14 February 2023

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) welcomes the opportunity to contribute to the thematic report on "Non-Communicable Diseases (NCDs) and Human Rights in the Inter-American System and the implications of prevention and treatment in relation to the obligations of States in light of the Inter-American legal framework" under the preparation of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights.

This submission seeks to respond to questions 5 (Challenges) and 6 (Best practices) of the questionnaire entitled "Chronic Noncommunicable Diseases in the Inter-American legal Framework of Human Rights".

5. Challenges (*Indicate which are the main structural, legal, economic, cultural, political and social challenges to introduce policies, programs, plans and/or legal norms whose purpose is: (i) the prevention and treatment of NCDs, and (ii) eliminate and /or reduce your risk factors).*

Non-communicable diseases (NCDs) are physical conditions such as cancer, diabetes, and respiratory or cardiovascular diseases, as well as mental health conditions. In fact, mental health is one of the major components of NCDs, and it is interrelated with other NCDs.[1]

The challenges to the enjoyment of the right to health[2] are related to the access to healthcare services for the prevention, treatment, and rehabilitation of non-communicable diseases as well as non-discrimination in accessing these services.[3] The three main challenges in that regard are:

1) Fragmented healthcare systems. Fragmented healthcare systems generate inequality in access to healthcare services, resulting in inequalities in health outcomes in NCDs. GI-ESCR in urban informal settlements in Kenya[4] and Nigeria[5] has found that inequality in access to

[1] Mann, S.P., Bradley, V.J. and Sahakian, B.J. (2016) 'Human rights-based approaches to mental health: a review of programs', Health and human rights, 18(1), p. 263.
[2] CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)' (1August 2000) E/C.12/2000/4.
[3] CESCR, 'General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)' (2 July 2009) E/C.12/GC/20.
[4] Global Initiative for Economic, Social and Cultural Rights, 'Patients or Customers? The impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 pandemic (2021) DOI: 10.53110/RPCN4627.
[5] Global Initiative for Economic, Social and Cultural Rights and Justice & Empowerment Initiative (2022) 'The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic. Discrimination and inequality in the enjoyment of the right to health. DOI: 10.53110/ZYQT7031.

healthcare services due to fragmented systems has emerged during the COVID-19 pandemic, and further exacerbated pre-existing struggles in accessing healthcare services for non-communicable diseases such as respiratory diseases as pneumonia, mental health conditions such as depression, as well as chronic kidney disease.[6]

2. Narrow biomedical approach. Employing a narrow biomedical approach to medical conditions that only focuses on biological causes of NCDs is not effective in improving health outcomes and ameliorating health inequalities, especially when it comes to marginalised populations. Mental health is also important to address social determinants.[7] A case study of migrants in Chile has evidenced the relevance of such a relationship. [8]

Furthermore, research has shown the benefits of applying a psychosocial approach that considers the root causes of NCDs, mental health conditions, as well as health inequalities in the prevention, treatment, and rehabilitation of such non-transmittable diseases.[9] GI-ESCR's research in the urban marginalised areas of Kenya and Nigeria highlights the link between the social determinants of health and non-communicable diseases, which was even more evident during the COVID-19 pandemic.[10]

A medical study has also documented that the combination of the two challenges above - fragmented healthcare systems and a narrow biomedical approach to medical conditions - has an overall negative impact on the treatment of diabetes and hypertension in Mexico.[11]

3. Overreliance on commercial actors. Overreliance on commercial actors in healthcare constitutes a barrier to accessing healthcare services in many countries, including when it comes to non-communicable diseases. For instance, in GI-ESCR's reports on Italy,[12] Kenya[13] and Nigeria[14] it was evidenced that during COVID-19, the right to health was endangered when States excessively relied on for-profit actors to deliver healthcare services. Specifically, in Italy, reliance on for-profit healthcare provision led to the neglect of relatively less remunerative sectors, such as family medicine and prevention, that are crucial in ameliorating health outcomes in non-communicable diseases. Additionally, private for-profit insurance companies can create barriers and discrimination when it comes to access to healthcare insurance in social

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[6] Ibidem.

[7] Chapman, Audrey, Carmel Williams, Julie Hannah, and Dainius Puras. 2020. 'Editorial: Reimagining the Mental Health Paradigm for Our Collective Well-Being'. *Health and Human Rights*, no. 1. Puras, Dainius. 2017. 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health', Human Rights Council (HRC), A/HRC/35/21

[8] Blukacz, A., Cabieses, B., Markkula, N., 2020. Inequities in mental health and mental healthcare between international immigrants and locals in Chile: A narrative review. International Journal for Equity in Health 19, 1–15.

[9] Williams, Janet E. 2017. Mental Health at the Crossroads: The Promise of the Psychosocial Approach. Routledge.

[10] See note 2 and 3.

[11] Arredondo, A., Azar, A., Recaman, A.L., 2018. Challenges and dilemmas on universal coverage for non-communicable diseases in middle-income countries: evidence and lessons from Mexico. Global Health 14, 89. https://doi.org/10.1186/s12992-018-0404-3.

[12] GI-ESCR, 'Italy's Experience during COVID-19: the Limits of Privatisation in Healthcare [Policy Brief]' (2 June 2021) available at: https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/60b78462b0e35034a1394630/1622639715294/2021-05-Policy-brief-italy-during-COVID-19-healthcare-privatisation.pdf.

[13] Global Initiative for Economic, Social and Cultural Rights, 'Patients or Customers? The impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 pandemic (2021) DOI: 10.53110/RPCN4627.

[14] Global Initiative for Economic, Social and Cultural Rights and Justice & Empowerment Initiative (2022) 'The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic. Discrimination and inequality in the enjoyment of the right to health. DOI: 10.53110/ZYQT7031.

healthcare insurance systems.[15] This trend has also been highlighted by Oxfam International[16] and Hakijami.[17]

United Nations Human Rights Treaty Bodies have raised over the years concerns, on the privatisation of healthcare services, as they can undermine equal access to healthcare services, negatively impact the enjoyment of the right to health, and underlined that private actors have to be monitored and regulated strictly by the state.[18] For instance, the Committee on the Rights of the Child (CRC) has stated that "is still concerned about the lack of an integral system of health care for all children up to age 18, the difference in quality between public and private healthcare services, the increased medication of children diagnosed with attention deficit hyperactivity disorder (ADHD) and both the undernourishment and obesity levels among children."[19] The CRC also has recommended a state to: "Take measures to improve accessible health-care services for children with disabilities, including sexual and reproductive health, allocate financial resources to reinforce accessibility to medical infrastructure, and require private service providers to implement universal design of equipment and accessible information to children with disabilities in the health system."[20]

6. Best practices (*Indicate which have been the best practices implemented whose purpose is: (i) the prevention and treatment of NCDs, and (ii) eliminate and/or reduce their risk factors).*

The best policy solution for the prevention and treatment of NCDs is through universal, strong and public healthcare systems. This is a fundamental prerequisite for the realisation of the right to health. In this regard, the Principles on Human Rights in Fiscal Policy affirm that 'States must use fiscal policy to eradicate structural discrimination and promote substantive equality, integrating in a cross-cutting manner the perspectives of populations who suffer from discrimination in the design and implementation of such policies, and adopting affirmative action when necessary'.[21]

In this context, the Global Manifesto for Public Services[22] expresses the shared, collective vision of a civil society movement demanding strong public services and providing a concrete

[15] See note 8-10.

[16] Anna Marriott, 'Blind Optimism: Challenging the Myths about Private Health Care in Poor Countries' Oxfam (1 February 2009).

[17] Economic and Social Rights Centre – Hakijami and the Centre for Human Rights and Global Justice, 'Wrong Prescriptions: the Impact of Privatising Healthcare in Kenya' (17 November 2021) https://chrgj.org/wp-content/uploads/2021/11/Report_Wrong-Prescription_Eng_.pdf accessed 13 January 2022; People's Health Movement (PHM) and Regional Network for Equity in Health in East and Southern Africa (EQUINET), 'Report of the East and Southern Africa Regional People's Health University' (2021) accessed 14 January 2022

[18] GI-ESCR, 'Compendium of United Nations Human Rights Treaty Bodies' Statements on Private Actors in Healthcare' (June 2021) accessed 25 February 2022.

[19] CRC, Concluding Observations, Chile, CRC/C/CHL/CO/4-5, 30 October 2015, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?sy mbolno=CRC/C/CHL/CO/4- 5&Lang=En.

[20] CRC, Concluding Observations, CRC/C/CRI/CO/5-6, 4 March 2020, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCRI% 2fCO%2f5-6&Lang=en.

[21] Principles of Human Rights in Fiscal Policy (2022), available at: https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf

[22] The Future is Public: Global Manifesto for Public Services (2021), available at: https://futureispublic.org/globalmanifesto/manifesto-en/

alternative to the dominant neoliberal narrative that has failed to ensure a dignified life for all. The manifesto positions public services as the foundation of a fair and just society and of the social pact that implements the core values of solidarity, equality, and human dignity. The Global Manifesto reinforces that health services, including for NCDs, cannot be left to the market. Unlike a commodity, their value is determined by their role in fulfilling human dignity rather than their market position. It is thus fundamental to ensure that public healthcare services are in place and available for everyone, regardless of status or ability to pay. This is also reinforced in the Santiago Declaration, an outcome document of a meeting of 400 social movements, trade unions and civil society organisations from all over the world that occurred in Santiago, Chile for a 4-day Conference in November 2022.[23] The Santiago Declaration express the urgent need to address the harmful effects of commercialising public services, to reclaim democratic public control, and reimagine a truly equal and human rights-oriented economy that works for people and the planet.

For more information, please consult the following publications:

- The Future is Public: Global Manifesto for Public Services (2021)
- Santiago Declaration (2022)
- Global Initiative for Economic, Social and Cultural Rights, 'Compendium of United Nations Human Rights Treaty Bodies' Statements on Private Actors in Healthcare' (June 2021).
- Global Initiative for Economic, Social and Cultural Rights, 'States' Human Rights Obligations regarding public services essential for the enjoyment of Economic, Social and Cultural Rights – The regional perspective' (September 2022).
- Global Initiative for Economic, Social and Cultural Rights, 'Ensuring public services for indigenous peoples: human rights standards' (December 2022).
- Global Initiative for Economic, Social and Cultural Rights and Justice & Empowerment Initiative (2022) 'The failure of commercialised healthcare in Nigeria during the COVID-19 pandemic. Discrimination and inequality in the enjoyment of the right to health'.
- Global Initiative for Economic, Social and Cultural Rights, 'Patients or Customers? The impact of Commercialised Healthcare on the Right to Health in Kenya during the COVID-19 pandemic' (2022)
- Principles for Human Rights in Fiscal Policy (2022).
- Global Initiative for Economic, Social and Cultural Rights, 'Italy's Experience during COVID-19: the Limits of Privatisation in Healthcare' (2 June 2021).

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[23] Santiago Declaration (2022), available at: https://www.gi-escr.org/latest-news/the-santiago-declaration-a-result-of-the-our-future-is-public-conference-co-organised-by-gi-escr.