Statement by Mr. Anand Grover

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Delivered by the Special Rapporteur on sale of children, child prostitution and child pornography, Ms. Najat Maalla M’jid
Excellencies,
Distinguished Delegates,
Ladies and Gentlemen,

I am delighted to open the second part of the Council’s full-day discussion on the child’s rights to health. While the first panel discussed broad challenges and achievements in realizing the children’s right to health, the discussions now will focus on implementing the right. As we heard in the morning, the child’s right to health does not mean a right to be healthy, nor does it entail a mere access to health care. The right to health of children, in the same way as that of adults, contains freedoms, such as the right to control one’s health and body, and entitlements, including the right to a system of health protection that provides equality of opportunity for every child to enjoy the highest attainable level of health.

Like other rights, the child’s right to the highest attainable standard of health imposes three levels of duty on States, as the primary duty-bearers. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right. The obligation to protect involves States to take measures that prevent third parties from interfering with the enjoyment of that right. And the obligation to fulfil requires that States adopt whatever measure necessary - legislative, administrative, budgetary and judicial – to achieve the full realization of the child’s right to health.

Like all rights set out in the Convention on the Rights of the Child, the child’s right to health should be interpreted in the light of the general principles of the Convention, which are the duty of non-discrimination; the child’s right to life, survival, and development; the best interests of the child; and the child’s right to express her/his views freely in all matters affecting her/him.

These are key international principles of the child’s right to health. How do we ensure their implementation at the national level? How do we empower children, as rights-holders, to claim their right to health, wherever they are? How do we mitigate
children’s heightened vulnerability to violations of their rights? How do we ensure the child’s access to effective remedies for violations of their right to health?

These are not easy questions and I strongly support the Council’s leadership in addressing them. This panel serves as a valuable forum to explore those questions and I would like to start the debate by flagging up three elements for the discussion.

First, we should consider the crucial role of national laws and policies, which should be in line with the State’s obligation to respect, protect and fulfil the child’s right to health. However, too often laws, regulations and policies constitute barriers to the full enjoyment of the child’s right to health. For example, legal restrictions, including provisions in civil and administrative laws, are increasingly applied to restrict or prohibit access and/or availability of sexual and reproductive health services, goods and information. Criminal laws and other legal restrictions may prevent adolescents from accessing certain sexual and reproductive healthcare goods, such as contraceptive methods, directly outlaw a particular service, such as access to safe abortion, or ban the provision of sexual and reproductive information through school-based education programmes. As I noted in my report to the GA, such criminal laws and other legal restrictions affecting sexual and reproductive health of adolescents may amount to violations of the enjoyment of the right to health and should therefore be revoked. The right to sexual and reproductive health is a fundamental part of the child’s right to health. States should ensure its full realization by providing comprehensive sexuality education as well as full and affordable access to quality sexual and reproductive health services that are confidential, age-friendly and evidence-based.

Second, human rights strengthen the child’s health in many ways, besides introducing sets of rules and regulations. They also require accountability, which is central to ensuring that duty-bearers are meeting their human rights obligations. National accountability mechanisms help States identify the gaps in existing policies and allow improving them, expose the barriers to the enjoyment of the right to health and offer appropriate redress. Such mechanisms include complaint systems, judicial remedies and independent monitoring bodies and they should be accessible, effective
and transparent. Any child victim of a violation of the right to health should have access to effective judicial or other remedies at both national and international levels. States have an obligation to ensure that children have access to timely and independent redress in the event of violations of their rights, and that children’s capacity is sufficiently developed to enable them to claim their right to health.

Finally, another important aspect is participation of children in all health-related decision-making at the community, national and international levels. Children’s voices must contribute to all stages of decision-making, from development and implementation of policies and programmes to their monitoring and evaluation. Their participation will also help to ensure that services are appropriate, effective and sustainable. The child’s right to non-discrimination and participation in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge the State’s obligations under the right to health. I would like to stress that participation of vulnerable children – children with disabilities, migrant children, minority children, children in mental health institutions or detention, children that use drugs - ensures that the needs and priorities of children with disproportionate vulnerability inform the delivery of health services. When assessing State compliance with their right to health obligations, we should consider the degree to which States ensure participation of children and empower them to claim their rights. After all, only through the child’s empowerment and participation we can be certain that all duty-bearers are respecting, protecting and fulfilling the child’s right to the enjoyment of the highest attainable standard of physical and mental health.

Distinguished Delegates,
Ladies and Gentlemen,

I would like to conclude my opening remarks by wishing a fruitful discussion on furthering the implementation of the child’s right to health.

Thank you.