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The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[1]

Mandate Holder

Paul Hunt

Mandate

The mandate was established in 2002[2], in recognition that the full enjoyment of the right to the highest attainable standard of physical and mental health still remains a distant goal, for millions of people throughout the world. 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; a healthy environment; and access to health-related education and information. The Special Rapporteur has been asked to apply a gender perspective and pay special attention to issues relating to non-discrimination and the rights of children.

Activities

- Annual Report;
- Communications with governments and other actors;
- Mission to Uganda from 17 to 25 March 2005;
- Joint preliminary report on the applicability of international human rights law to the persons held at the detention facilities in Guantánamo Bay, Cuba (ISHR's summary of this report is available under the reports of the Special Rapporteur on Torture in the compilation of summaries for Item 11);
- The Special Rapporteur also participated in numerous briefing sessions and meetings related to his mandate.

Annual report[3]

Scope

The report reflects on the activities of, and issues of particular interest to, the Special Rapporteur since his interim report to the General Assembly. The annex contains a human rights-based approach to indicators in relation to the reproductive health strategy endorsed by the World Health Assembly in May 2004.

Summary and key conclusions

The right to an effective, integrated health system accessible to all:
The right to health can be understood as the right to an effective and integrated health system, encompassing health care and the underlying determinants of health, such as adequate sanitation and health education, as well as the social determinants of health that are responsive to national and local priorities, and accessible to all, including minorities, indigenous peoples and rural populations.

[1] Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.
[2] Commission on Human Rights *Resolution 2002/31*.
[3] E/CN.4/2006/48, 3 March 2006.

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The Millennium Development Goals (MDGs) give direct and indirect prominence to health. The first Goal to eradicate extreme poverty and hunger, for example cannot conceivably be achieved if the health Goals are not attained. At the World Summit in September 2005, Heads of States and Government committed themselves to improve health systems, in developing countries and economies in transition, to achieve the health related MDGs by 2015. A Leaders' Call to Action on the right to health was launched in December 2005, urging governments and other relevant actors to fulfil their responsibilities in ensuring the realisation of the fundamental human rights to health for all and calling for systematic changes to build strong health systems.

Human rights-based approach to health indicators:
A human rights-based approach generally requires that special attention be given to disadvantaged individuals and communities; active and informed participation of individuals and communities in policy decisions that affect them; and effective, transparent and accessible monitoring and accountability mechanisms. A human rights-based approach to health indicators therefore not only monitors key health outcomes, but also some of the processes by which they are achieved. Such an approach uses many commonly used health indicators, adapts them so far as necessary, notably by disaggregating them by sex or race, and adds some new indicators, such as participation and accountability. While there is no alternative but to use indicators to measure and monitor the progressive realisation of the right to health, their importance should not be exaggerated and it should be remembered that indicators while providing useful indications they can not, no matter how sophisticated they are, give a complete picture of the enjoyment of the right to health in a particular jurisdiction.

As the right to health is subject to progressive realisation, what is expected of a State will vary over time and they therefore need a device to measure this variable dimension of the right to health. The most appropriate device in this respect is the combined application of indicators and benchmarks. These can help States monitor progress over time, enabling the authorities to recognise when policy adjustments are required and they can help to hold the State to account in relation to the discharge of its responsibilities arising from the right to health. Health indicators may be used to monitor the progressive realisation of the right to health provided:

- They correspond, with some precision, to a right to health norm;
- They are disaggregated by at least sex, race, ethnicity, rural/urban and socio-economic status;
- They are supplemented by additional indicators that monitor five essential features of the right to health: the existence of a national strategy and plan of action that includes the right to health; the participation of individuals and communities in relation to the formulation of health policies and programs; access to health information and confidentiality of personal health data; international assistance and cooperation of donors in relation to the enjoyment of the right to health in developing countries; and accessible and effective monitoring and accountability mechanisms.

There is no commonly agreed and consistent way of categorising and labelling different types of health indicators and as a result there is a multiplicity of categories of indicators, including performance, statistical, process, outcome, achievement and qualitative indicators. This undermines the creation of a simple and consistent system for human rights-based indicators and the Special Rapporteur has therefore suggested that special attention should be devoted to three categories of indicators: structural, process and outcome indicators. Structural indicators address the presence of key structures and mechanisms conducive to the realisation of the right to health, such as the ratification of international treaties. Process indicators measure programs, activities and interventions and outcome indicators measure the impact of programs, activities and interventions on health status and related issues, such as maternal mortality or HIV prevalence rates.

Key recommendations

- Discussions about human rights and indicators must move beyond the theoretical to the practical. States, UN bodies and specialised agencies, and NGOs should adapt their existing indicators and identify new indicators on the right to health, thereby **adopting a human rights-based approach to health indicators**;
- **OHCHR** should continue to play its pivotal role in the development of a human rights-based approach to health indicators.

Mission to Uganda[4]

Scope

Mission to Uganda from 17 to 25 March 2005 to consider the issue of neglected diseases. The Special Rapporteur consulted with a wide range of actors, such as representatives of the Government, the National Human Rights Commission, international organisations such as the World Health Organisation (WHO), associations of health professionals, communities and individuals affected by neglected diseases, non-governmental organisations (NGOs), development partners such as the World Bank, and pharmaceutical companies. The Special Rapporteur also visited health centres and affected communities.

Summary and key conclusions

- Neglected diseases affect almost 1 billion people around the world. They tend to be characterised by their almost exclusive incidence in poor and marginalised populations in developing countries; their ability to be substantially alleviated by the introduction of basic public health measures; the failure of curative interventions to reach affected populations; and the fact that the development of new tools has been largely under-funded or sidelined mainly because there is little or no market incentive;
- These diseases have an enormous **physical**, **psychological** and **economic burden**;
- In Uganda, neglected diseases include lymphatic filariasis, schistosomiasis, onchocerciasis (river blindness), human African trypanosomiasis (sleeping sickness), and soil-transmitted helminths;
- They **affect** the most **marginalised populations** in Uganda both in rural and urban areas. Internally displaced persons living in "protected villages" as a result of the conflict in northern regions of Uganda are especially affected because the poor standard of living in most of these camps;
- The Government has sought to implement its international commitments through the national Poverty Eradication Action Plan (PEAP); the Health Sector Strategic Plan (HSSP), which seeks universal delivery of the Ugandan National Minimum Health Care Package (UNMHCP); and other pro-poor health-related policies.

Status of the key features of a right-to-health approach to neglected diseases in Uganda:

- There is relatively little public **information** or **education** about neglected diseases in Uganda, and there are harmful misconceptions about them;
- Uganda actively encourages **participation** in health decision-making, in particular through its policy of **decentralisation**;
- There is a shortage of **health professionals** in Uganda to deliver a basic level of health services to the entire population. This problem has multiple dimensions including rigid ceilings on the health budget; the "skills drain" to income-rich countries; and corrupt practices of some professionals;
- **Stigmatisation** and **discrimination** are a problem in Uganda and have an impact not only on health but also on the right to work, education, housing and food;
- **Integrated health system**: The delivery mechanisms for mass drug administration (MDA) in Uganda do not integrate interventions for neglected diseases enough;
- Currently only 10 per cent of global funding for **research** and **development** goes towards diseases that affect 90 per cent of the world's population;
- Uganda is extremely dependant on **aid**, particularly for the health sector, but there is still a wide gap between the cost of a national minimum health-care package and the funds currently available for this purpose;
- The Ministry of Health **monitors** the impact of health policies and there are two general mechanisms of **accountability**, the Constitution and the courts, and the independent Uganda Human Rights Commission. The Human Rights Commission may offer more promising possibilities;
- The Ugandan health sector is generally under-funded and is constrained by **expenditure ceilings** to maintain macroeconomic stability as a condition of accessing International Monetary Fund loans;
- Much of the analysis has general application to other countries where neglected diseases are prevalent.

Key Recommendations

The key elements of a right-to-health approach to neglected diseases:

- The Government should launch public **information** campaigns, including information on preventive and health-promoting behaviour and access to health services, targeting disadvantaged communities;
- The Government should continue to promote and develop **community participation** in health-decision-making;

[4] E/CN.4/2006/48/Add.2, 19 January 2006.

- The Government must devise a coherent strategy and plan of action with regards to the human resources crisis in the health sector. Compelling incentives and special policies should be introduced to attract health professionals to work in isolated and disadvantaged communities;
- Wide ranging measures are required to combat **discrimination** and **stigma** associated with neglected diseases, such as public information campaigns; the integration of human rights training in the curricula of medical schools; measures to ensure equal access to health services;
- There is a need for an **integrated health system**, which provides equality of opportunity to enjoy the right to health, and which gives a high priority to neglected diseases. The Government should urgently examine the possible alignment of various MDA delivery mechanisms, and the possibility of using programs in relation to HIV/AIDS, tuberculosis and malaria to enhance interventions for other diseases;
- Enhanced **research** and **development** that addresses the needs of the entire population is needed and should be prioritised by taking into account the health of those living in poverty and other marginalised groups. Ugandan **patent law** should be reformed to take advantage of the flexibilities of the Doha Declaration, which recognises that the TRIPS Agreement should be implemented in a manner supportive of the protection of public health and the promotion of access to medicines for all. A Ugandan National Health Research Organisation should be established as a matter of priority to engage in research and development, while giving high priority to neglected diseases;
- **Donors** and the **international community** should devote more attention and resources to neglected diseases, especially in northern Uganda. Much greater integration among global initiatives for different diseases is needed at all levels. The WHO in particular should assume a coordination role;
- Development partners should not apply any pressure on the Government to impose **inflexible budget ceilings** that could have the effect of restricting the flow of available funds into the health sector;
- The international and regional human rights systems should draw attention to neglected diseases and neglected populations whenever possible, for example in periodic reporting to human rights treaties;
- The existing **monitoring mechanisms** in Uganda need to be enhanced and the Ugandan Human Rights Commission should establish a right-to-health unit responsible for monitoring relevant policies, and for holding all actors accountable in relation to neglected diseases and the right to health.

Summary of communications sent to and replies received from Governments and other actors[5]

Scope

Summaries of communications, government replies, observations and follow-up relating to the Special Rapporteur's mandate for the period 2 December 2004 to 1 December 2005.

Summary

Communications that have not received a reply are marked with an asterisk. Communications were sent to:

- **Bangladesh*[6]** concerning the situation of a detainee, who was allegedly refused treatment for his back pains;
- **Chile*[7]** concerning the situation of a detainee suffering from cancer;
- **China[8]** concerning the situation of two detainees, both suffering from diabetes, who had allegedly not received medical treatment for their conditions. The Government **replied**, explaining that China was a party to international legal instruments prohibiting torture and that prisoners would therefore not be subjected to torture. The government also replied to an earlier communication[9], reporting that the health of another detainee was excellent;
- **Colombia*[10]** concerning the implementation of legislation that makes abortion punishable as an illegal act in all circumstances. According to information received, abortion-related causes appear to be the third leading cause of maternal mortality;
- The **Democratic Republic of the Congo*[11]** regarding the victims of widespread, indiscriminate and systematic sexual violence committed in the country since 1996;
- **Equatorial Guinea*[12]** concerning the situation of 70 detainees;

[5] E/CN.4/2006/48/Add.1, 22 December 2005.
[6] Joint urgent appeal.
[7] Joint letter.
[8] Two joint urgent appeals
[9] E/CN.4/2005/51/Add.1, 2 February 2005.
[10] Joint letter.
[11] Joint urgent appeal.
[12] Joint letter.

- **Finland** concerning the situation of a Finnish citizen who sought medical treatment in Germany. The Government confirmed that the person in question was not covered by the Finnish social security system;
- **Iceland*, Liechtenstein*, Norway*, Switzerland* and Thailand*** in relation to Thai-EFTA trade negotiations, which had omitted important public health safeguards;
- The **Islamic Republic of Iran***[13] regarding the situation of four detainees, some of whom were suffering from health problems but were denied access to medical treatment;
- **Iraq***[14] regarding the bombing in late August 2005 of a field clinic in Al Karablaa village in which at least 50 people were killed;
- **Israel***[15] concerning the situation of a seriously ill detainee suffering from leukaemia, and a joint letter regarding the spread of toxic chemicals on fields located near to villages;
- **Lebanon**[16] regarding the situation of a sick detainee. The Government **replied** that the prisoner had benefited from all the rights afforded under the law, a doctor had determined the prisoner to be in good health, and that he was free to consult a doctor or specialist;
- **Mongolia***[17] concerning a detained lawyer and member of a non-governmental body, allegedly suffering from a serious heart condition but who had only been allowed two visits to his doctor;
- **Myanmar**[18] regarding the situation of several political prisoners suffering from various health problems, the death of several other prisoners, and the widespread and systematic violence against women and girls. The Government replied stating that one of the detainees had been treated medically;
- **Nigeria***[19] regarding the situation of three nationals of Equatorial Guinea detained in Nigeria, one of whom was allegedly denied appropriate medical treatment for his diabetes;
- The **Russian Federation***[20] regarding the situation of a detainee who was denied medical treatment;
- The **Sudan***[21] concerning the situation of four detainees who had allegedly suffered from torture and ill treatment, and the widespread sexual violence against women and girls in Darfur. The Government **replied** to the second communication, transmitting a list of seven reports of rape either under investigation, or having been submitted to the court;
- The **Syrian Arab Republic***[22] concerning the situation of three women detainees, two of whom were pregnant and one who had just given birth. It is reported that they were detained in poor conditions and one of the women suffered a miscarriage as a result of torture;
- **Thailand***[23] regarding the situation of the Lao Hmong people living without appropriate health services;
- **Turkmenistan*** concerning reforms in the health-care sector, which may threaten many individuals' access to health in the country;
- The Government of **Ukraine replied** to an earlier communication[24] stating that two detainees had received necessary medical treatment;
- The **United Kingdom of Great Britain and Northern Ireland** regarding recent and further proposed changes to the National Health Service Regulations 1989, which allegedly obliges NHS hospitals to withdraw free secondary-level care to failed asylum-seekers and undocumented migrants. The Government **replied** that no regulations give the NHS authority to refuse treatment to an overseas visitor in clinical need, only to charge them for it;
- **Vietnam**[25] regarding the situation of a detainee, allegedly suffering from severe mental illness and being denied medical treatment. The Government **replied**, stating that the information in the urgent appeal was untrue. In another letter, the Government reported that the detainee had been granted special amnesty;
- **The Global Fund to Fight AIDS, Tuberculosis and Malaria*** regarding the termination of the Global Fund's grants to Myanmar;
- The **United Nations Interim Administration Mission in Kosovo**[26] (UNMIK) regarding the relocation of Roma, Ashkali and Egyptian internally displaced people. UNMIK **replied** that there were ongoing measures to address the health issues, including medical teams working full time in the camps.

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[13] Three joint urgent appeals.
[14] Joint urgent appeal.
[15] Joint urgent appeal.
[16] Joint urgent appeal.
[17] Joint urgent appeal.
[18] Five joint urgent appeals.
[19] Joint urgent appeal.
[20] Joint urgent appeal.
[21] Two joint urgent appeals.
[22] Joint urgent appeal.
[23] Joint urgent appeal.
[24] E/CN.4/2005/51/Add.1, 2 February 2005, para.70.
[25] Joint appeal.
[26] Joint urgent appeal.

Joint Report on the situation of detainees at Guantánamo Bay[27]

By the Chairperson- Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Scope

Since January 2002, the five mandate holders have been following the situation of detainees held at the United States Naval Base at Guantánamo Bay. In June 2004, they decided to continue this task as a group because the situation falls under the scope of each of the mandates. In studying the situation, they have continuously sought the cooperation of the United States authorities and on 25 June 2004, they sent a letter, followed by several reminders, requesting the Government of the United States of America to allow them to visit Guantánamo Bay in order to gather first-hand information from the prisoners themselves. By letter dated 28 October 2005, the Government of the United States extended an invitation for a one-day visit to three of the five mandate holders, inviting them "to visit the Department of Defense's detention facilities [of Guantánamo Bay]". The invitation stipulated that "the visit will not include private interviews or visits with detainees". In their response to the Government dated 31 October 2005, the mandate holders accepted the invitation, including the short duration of the visit and the fact that only three of them were permitted access, and informed the United States Government that the visit was to be carried out on 6 December 2005. However, they did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-findings missions by special procedures and undermine the purpose of an objective and fair assessment of the situation of detainees held in Guantánamo Bay. In the absence of assurances from the Government that it would comply with the terms of reference, the mandate holders decided on 18 November 2005 to cancel the visit[28].

The report is therefore based on the replies of the Government to a questionnaire concerning detention at Guantánamo Bay; interviews with former detainees; responses from lawyers acting on behalf of some Guantánamo Bay detainees; and information available in the public domain, including reports prepared by NGOs, information contained in declassified official US documents and media reports. A number of revisions were made in the light of the Government's reply of 31 January 2006. The report should be seen as a preliminary survey of international human rights law relating to the detainees in Guantánamo Bay.

Summary and Key Conclusions

- As of 21 October 2005, approximately **520 detainees** are being held in Guantánamo Bay. From the establishment of the detention centre in January 2002 until September 2005, 264 persons were transferred from Guantánamo, 68 of whom were transferred to the custody of other Governments. As of the end of December 2005, a total of **nine detainees** had been **referred to a military commission**;
- **International human rights law** is applicable to the analysis of the situation of detainees in Guantánamo Bay and the war on terror, as such, does not constitute an armed conflict for the purposes of the applicability of **international humanitarian law**. The USA has not notified the Secretary-General of any official derogation from the *International Covenant on Civil and Political Rights* (ICCPR). Nevertheless, some rights can never be derogated from, such as the right to life; the prohibition of torture or cruel, inhuman or degrading treatment or punishment; and freedom of thought, conscience and religion;
- The position of the USA is that the laws of war allow it to hold enemy combatants without charges or access to counsel for the duration of hostilities, not as a measure of punishment, but of security and military security. It is particularly important to distinguish between the detainees captured by the United States in the course of an armed conflict and those captured under circumstances that did not involve an armed conflict. Many of the detainees held at Guantánamo Bay were captured in places where there was - at the time of their arrest - no armed conflict involving the United States. In this context, it is to be noted that the global struggle against international terrorism does not, as such, constitute an armed conflict for the purposes of the applicability of international humanitarian law. The legal provision allowing the United States to hold belligerents without charges or access to counsel for the duration of hostilities can therefore not be invoked to justify their detention. The interviews conducted by the mandate holders with detainees corroborated allegations that the purpose of the detention of most of the detainees is not

[27] E/CN.4/2006/120, 27 February 2006.
[28] P. 4 of the Report.

to bring criminal charges against them but to extract information from them on other terrorism suspects.. The persons held at Guantánamo Bay are entitled to challenge the legality of their detention before a judicial body in accordance with article 9 of ICCPR, and to obtain release if detention is found to lack a proper legal basis. This right is currently being violated, as the Combatant Status Review Tribunal (CSRT) created to consider challenges to the legality of detention does not provide detainees with a fair opportunity to do so; and the continuing detention of all persons held at Guantánamo Bay amounts to arbitrary detention in violation of Article 9 of ICCPR.

- The executive branch of the United States Government operates as judge, prosecutor and defence counsel of the Guantánamo Bay detainees: this constitutes serious violations of various guarantees of the right to a fair trial before an independent tribunal as provided for by Article 14 of the ICCPR. The right to a fair trial is also limited by restrictions on the right to be tried in one's presence, the right to adequately prepare one's defence, the manner in which information is obtained from detainees, and the right to be tried without undue delay;
- Attempts by the US Administration to redefine "torture" in the context of the war on terror, as well as confusion with regard to authorised and unauthorised interrogation techniques raise extremely serious human rights concerns;
- The interrogation techniques authorized by the Department of Defense, particularly if used simultaneously, amount to degrading treatment in violation of Article 7 of ICCPR and Article 16 of the *Convention against Torture*. If in individual cases, which were described in interviews, the victim experienced severe pain or suffering, these acts amounted to torture as defined in Article 1 of the *Convention Against Torture*.
- The general conditions of detention, such as the uncertainty about the length of detention, prolonged solitary confinement amount to **inhuman treatment**, to a violation of the **right to health** and to a violation of the right of detainees under Article 10 (1) of ICCPR to be treated with humanity and with respect for the inherent dignity of the human person;
- The **excessive violence** used during transportation, operations by the Initial Reaction Forces, and force feeding of detainees on hunger strike amount to torture;
- The practice of **rendition** of persons to countries where there is a substantial risk of torture amounts to a violation of the principle of non-*refoulement* and is contrary to Article 3 of the *Convention Against Torture*;
- The lack of any impartial **investigation into allegations of torture** and ill-treatment and the resulting impunity of the perpetrators amount to a violation of Articles 12 and 13 of the *Convention Against Torture*;
- There are reliable indications of violations of the right to **freedom of religion or belief**, such as interrogation techniques based on religious discrimination or aimed at offending the religious feelings of detainees. There were also reports of possible mishandling of religious objects such as the Holy Koran, which were confirmed by the Government;
- The totality of the conditions of the confinement of detainees at Guantánamo Bay constitute a violation of the **right to health** because they derive from a breach of duty and have resulted in profound deterioration of the mental health of many detainees reflected in the 350 of acts of self-harm recorded in 2003 alone;
- The American Medical Association has adopted the *Declaration of Tokyo*, which prohibits doctors from participating in, or being present during, any form of torture or other cruel, inhuman or degrading treatment and providing any knowledge to facilitate such acts. In light of this commitment, there are serious concerns about **alleged violations of ethical standards by health professionals**, such as breaches of confidentiality; participation in, advice for or presence during interrogations; and presence or participation in non-consensual treatment, especially the force-feeding of competent detainees.

Key Recommendations

- Persons suspected of being terrorists should be detained in accordance with a criminal procedure that respects safeguards enshrined in international law. The Government should therefore either expeditiously bring all Guantánamo Bay detainees to trial, or release them without further delay. The USA should consider trying suspected terrorists before a **competent international tribunal**;
- The USA should **close the Guantánamo Bay detention facilities** without further delay. Until then, it should refrain from any practice amounting to torture or cruel, inhuman or degrading treatment or punishment; discrimination on the basis of religion; and violations of the rights to health and freedom of religion. In this respect, all special interrogation techniques authorised by the Department of Defence should immediately be revoked;
- The Government should refrain from **expelling, returning, extraditing or rendering** Guantánamo Bay **detainees** to States where there may be at serious risk of being tortured;

- The Government should ensure that every detainee has the right to make a complaint regarding his treatment and that all allegations of torture or cruel, inhuman or degrading treatment or punishment are thoroughly investigated by an independent authority, and all those who have perpetrated, ordered, tolerated or condoned such practices are brought to justice;
- The Government should ensure that all victims of torture or cruel, inhuman or degrading treatment or punishment are provided with **fair** and **adequate compensation**;
- The Government should provide personnel of detention facilities with **adequate training** on international human rights standards for the treatment of persons in detention, and to enhance their **sensitivity of cultural issues**;
- All five mandate holders should be granted **full** and **unrestricted access** to the Guantánamo Bay facilities, **including private interviews with detainees**.