Statement by 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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Mr. Chairperson,

Distinguished Delegates,

Ladies and Gentlemen,

I am delighted to be with you today. Since my last presentation in October 2012, I have undertaken a number of activities to develop my mandate further and to assess, monitor and publicly report on the issues related to the implementation of the right to health globally. I completed a country mission to Japan in December 2012, and following the invitations extended to me, I am planning to visit Mozambique, Brazil and Madagascar. I also submitted a report on the right to health of migrant workers (A/HRC/23/41) to the Human Rights Council and presented my study on access to medicines (A/HRC/23/42) at its twenty-third session, held in June 2013. In addition to contributions made to a number of meetings and conferences on the right to health, I organized a regional civil society consultation in July 2013 in Kathmandu, Nepal for south Asia.

Distinguished delegates,

I would now like to turn to my report (A/68/297), which considers the right to health obligations of States and non-State actors towards persons affected by conflict situations. The scope of the report extends beyond armed conflicts and includes internal disturbances, protests, civil strife and unrest, occupied territories and territories with a constant military presence. You will note that, following the International Court of Justice, UN human rights treaty bodies and regional human rights bodies, I reiterate that human rights law continues to apply in situations governed by international humanitarian law. And where the application of international humanitarian law is disputed, human rights protection continues to apply to affected populations.
The concurrent application of both sets of laws in armed conflict provides complementary and mutually reinforcing protection of the rights of affected populations. Both international humanitarian law and human rights law share the aim of protecting all persons and are grounded in the principles of respect for the life, well-being and human dignity of the person. However, human rights law contains more specific obligations regarding availability, accessibility, acceptability and quality of health services than international humanitarian law does.

As at other times, States have the obligation to respect, protect and fulfil the enjoyment of the right to health in conflict, including in situations where States occupy or otherwise exercise effective control over foreign territory. The right to health framework imposes upon States certain core obligations, which are minimum essential levels of the right to health that include the obligation to ensure equitable distribution and access to health facilities, goods and services on a non-discriminatory basis; the obligation to provide essential medicines; and the obligation to formulate a national health plan or policy in a transparent and participatory way, taking into consideration the special needs of vulnerable populations.

Mr. Chairperson,

It goes without saying that a functioning health system is vital to the enjoyment of the right to health of people during and after conflict. Availability, accessibility and acceptability of quality health facilities, goods and services are critical in times of conflict. My report therefore considers a number of concerns in that area. Refusal to treat wounded or providing preferential treatment to people of the same allegiance occurs frequently during conflict. Such practices not only discriminatory but also constitute a violation of the enjoyment of the right to health. Health facilities, goods and services should be in line with medical ethics, which include the provision of
impartial care and services by health professionals to people affected by conflict. Medical impartiality in treating wounded people is also mandated by international humanitarian law.

You will agree with me that availability and accessibility of functioning hospitals and clinics are essential to the enjoyment of the right to health. However, a number of physical barriers severely affecting access to health facilities and services have been deployed in times of conflict. These range from arbitrary checkpoints to roadblocks to curfews to blockades. In some cases, civilians have been prevented from accessing life-saving medicines and supplies due to obstruction, restriction, or diversion of medical supplies. In my report, I therefore remind States of their obligation to ensure that health facilities are not harmed as a consequence of conflict. Where restricting the right to health may be necessary, States should adopt the least restrictive alternative and ensure that the objective of such barriers is legitimate, and that the restrictions are proportionate to achieving the objective.

Furthermore, we have observed that some States have regrettably enacted laws and policies restricting or criminalizing provision of medical care to people opposing the State, such as political protestors and non-State armed groups. Consequently, doctors and other health-care workers have been arrested, charged and sentenced for acting within their professional duty of ensuring medical impartiality. Such laws deter healthcare workers from providing services in conflict situations due to fear of prosecution, creating a chilling effect on healthcare providers.

I have also received expressions of concerns about destruction of health infrastructure by States, or failure to protect against such destruction by third parties, impairing the availability and accessibility of quality health facilities, goods and services. As you know, intentional targeting of health facilities constitutes a violation
of the principle of distinction under international humanitarian law, which obliges parties to the conflict to refrain from attacking medical personnel, units, material and transports unless they are used to commit hostile acts outside their medical and humanitarian functions. Acts that do not involve specific targeting of health facilities may also violate the right to health, when they increase the risk of damage to the facility or decrease patient access to it by locating military outposts or weapons in the vicinity of a clinic.

It is deplorable that attacks on health workers including assaults, intimidation, threats, kidnapping, and killings, as well as arrests and prosecutions, are increasingly used as a strategy in conflict situations. Disruption in supply chains, looting of health facilities, intentional shelling and bombardment of hospitals, and shooting at ambulances carrying patients have also been used as a military strategy. In countries with poor health infrastructure, destruction of even a single hospital or attacks on already scarce healthcare workers can have a devastating impact on public health. Insecurity can also result in healthcare professionals fleeing, creating a dearth of trained medical professionals in these regions.

Such attacks not only violate the right to health of people affected by conflict but also cripple the healthcare system as a whole. States therefore have an immediate and continuous obligation to provide healthcare workers and humanitarian organizations with adequate protection during conflict and to refrain from attacking health facilities and services, including in areas controlled by armed groups. States should also take measures to protect health facilities and health workers from attacks by non-State armed groups. It is also important to pay particular attention to persons rendered vulnerable by conflict, such as women, children, older persons, people with disabilities and displaced communities. We should recognize the diverse vulnerabilities
in different communities and empower them to participate in all decision-making processes that affect their health.

Distinguished Delegates,

As I mentioned before, the primary responsibility for implementing the right to health in conflict lies with States that are involved in the conflict. We should not forget that other States and non-State actors, including armed groups, also bear obligations in that regard. To comply with their international obligations, States should respect the enjoyment of the right to health of populations in other countries, protect against violations by third parties where they can influence those parties through legal or political means, and facilitate access to essential health services in other countries, depending on the availability of resources. In particular, States should not neglect their obligation to provide humanitarian aid in conflict and post-conflict situations.

Today, the majority of contemporary conflicts are non-international armed conflicts involving one or more non-State armed groups. Such armed groups can have significant influence on the enjoyment of the right to health in conflict. There is growing acceptance that non-State armed groups that are stable, organized, and have effective control over territory should be bound by a defined range of international humanitarian law and human rights obligations. These include obligations to refrain from attacking humanitarian facilities, vehicles, and personnel, and from harming civilian populations, including through sexual violence or destroying food or water systems. They are also expected to respect norms contained in the Universal Declaration of Human Rights, especially where they exercise control over territory, and adhere to responsibilities they voluntarily assumed through agreements, unilateral statements and monitoring systems under the Security Council. Having said that, I note that the obligation of States to protect people against third-party violations continues
regardless of whether armed groups are present on its territory. The presence of third-party armed groups should not be used by States as an excuse to abdicate from their right to health responsibilities in conflict areas.

My final concern is that monitoring of violations of the right to health in conflict and post-conflict situations is often poor or incomplete. This is due to insecurity and lack of systematic data collection and dissemination by States and international organizations. It is also related to the fact that monitoring mechanisms may focus excessively on high-profile issues such as attacks on international aid workers rather than more common violations such as threats against local workers or damage to underlying determinants of health care.

States should ensure that accurate information is available to independent monitors and there should not be retaliation against persons who report violations or cooperate with monitoring mechanisms. Security concerns should not be used to justify blanket bans on reporting violations. In my report, I also urge States to promote community-based monitoring initiatives, which can ensure that the views of the local population are taken into account, and provide transparent and reliable information to civil society and affected communities.

It is equally important that States provide effective, prompt and accessible means of claiming remedies, including adequate reparations, within judicial and administrative systems. Remedies should not be limited to punitive actions against perpetrators but should also aim to restore the right to health of affected persons and bridge the divisions in society, arising from or sustaining conflict. As such, the remedies of satisfaction and guarantee of non-repetition, which include measures to cease current violations and prevent future violations, are particularly important.
Mr. Chairperson,

Distinguished Delegates,

I would like to conclude my statement by noting that it is the last time that I am presenting to this august body in my capacity as the Special Rapporteur on the right to health. My second term as the Special Rapporteur will end in August next year. I am grateful to you all for the cooperation and support you have extended to me during the course of my mandate. Together, we have achieved notable progress in promoting and protecting the enjoyment of the right to health globally. Yet there is more work need to be done, and I am confident that with we will collectively overcome future challenges and turn them into fruitful opportunities.

I stand ready to engage in further dialogue on the above-mentioned important issues and look forward to hearing your questions and comments.

Thank you.