

OBSERVATIONS REQUESTED BY THE OFFICE OF THE UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR) ON THE CASE INVOLVING MR. EDUARDO E. HERRERA, CUBAN NATIONAL

Firstly, it should be noted that the Mr. Eduardo E. Herrera was recently granted refugee status and is awaiting resettlement. Furthermore, the Government of Trinidad and Tobago wishes to underscore that there have been no violations of Mr. Herrera's human rights and Mr. Herrera has always been treated in a fair and humane manner by the relevant agencies handling his case.

a) Refutation of Mr. Herrera's allegations

The records indicate that Mr. Herrera arrived in Trinidad and Tobago from St. Lucia on 25 October, 2016 and not on 26 October, 2016 as indicated. Mr. Herrera declared that he was in transit to Guyana and in keeping with standard procedure, he was permitted entry for two (2) days until 27 October, 2016 in accordance with Section 9(1) (d) of the Immigration Act, Chapter 18:01 of the Laws of the Republic of Trinidad and Tobago, for that purpose. There was no further interaction between the Immigration Division and Mr. Herrera at the Piarco International Airport. On a subsequent date, the Immigration Division learned from Mr. Herrera that he was prohibited by personnel of the airline (Caribbean Airlines Limited) from boarding an onward flight to Guyana, as he was not in possession of a valid return ticket to Cuba.

Mr. Herrera failed to seek an extension of stay from the Immigration Division before the expiration of his landing certificate. As a result, he was in breach of the Immigration Regulations and should have been subject to detention and appearance before a Special Inquiry Officer in accordance with *Section 9(4)(f) of the Immigration Act, Chapter 18:01 of the Laws of the Republic of Trinidad and Tobago*. However, he sought asylum through the Living Water Community (LWC), the implementing partner of the United Nations High Commissioner for Refugees (UNHCR) in Trinidad and Tobago.

Mr. Herrera's case was brought to the attention of the Refugee Unit, Immigration Division on 8 November, 2016 via a letter of even date from the LWC. The letter informed the Chief Immigration Officer that Mr. Herrera had applied for refugee status and requested the Immigration Division to place Mr. Herrera on an Order of Supervision according to the agreed-upon Standard Operating Procedures (SOPs) for the Protection of Asylum-Seekers and Refugees in Trinidad and Tobago.

The Immigration Division has categorically denied any claims that Mr. Herrera was threatened with deportation by any staff member of the Refugee Unit, Immigration Division and by extension the Ministry of National Security. Mr. Herrera has always been treated and accommodated in a civil and professional manner. At no time during his monthly visits to the Refugee Unit did Mr. Herrera ever lodge a complaint or request an audience with the Officer- in-Charge to voice any objection or concern regarding his treatment.

b) Legal basis for the confiscation of the passport of Mr. Herrera and his alleged refusal of exit from Trinidad and Tobago

The Republic of Trinidad and Tobago currently does not have legislation to govern refugee and asylum related matters. In the absence of said legislation, stakeholders follow the Ministry of National Security's Interim SOPs. In accordance with these procedures, persons seeking asylum are placed on Orders of Supervision, pursuant to Section 17(1) of the Immigration Act, which requires periodic reporting to the Immigration Division. This is a facility granted to refugees and asylum-seekers so that they may have freedom of movement instead of being detained at the Immigration Detention Centre (IDC). At no point in time was Mr. Herrera detained during his continued stay in Trinidad and Tobago. Persons who are under Orders of Supervision usually have their travel documents retained by the Immigration Division until they depart the territory.

There was nothing to prevent Mr. Herrera from leaving Trinidad and Tobago although it would not have been prudent to do so pending the outcome of his application.

c) Measures in place to ensure that an individual assessment is conducted in every return decision in accordance with the principle of non-refoulement

The Office of the UNHCR conducts its own interviews of persons seeking asylum or refugee status.

If a person's application for asylum is denied, he/she is subject to the process of a Special Inquiry, which is an individual assessment as per *Section 25(8) of the Immigration Act*. Notwithstanding, the Government of Trinidad and Tobago strictly adheres to the principle of non-refoulement.

d) Additional information regarding the measures adopted to ensure that Mr. Herrera is not forcibly returned to Cuba

The Republic of Trinidad and Tobago adheres to the principle of non-refoulement. An asylum-seeker is not considered for repatriation until his/ her application for asylum has been rejected by UNHCR.

e) Measures adopted to ensure the legal situation of Mr. Herrera is rendered clear and in a manner which is compatible with his fundamental human rights

Even though the enactment of enabling legislation is still pending, asylum-seekers and refugees in Trinidad and Tobago are treated in the best manner possible, in compliance with the related Conventions and within the existing laws of the Republic of Trinidad and Tobago. The Interim SOPs make provision for asylum-seekers and refugees to have freedom of movement in Trinidad and Tobago until the completion of the Refugee Status Determination process by the UNHCR. Only in exceptional circumstances, related to the preservation of national security are persons

detained. Until legislation comes into effect, refugees and asylum-seekers are not permitted to work in Trinidad and Tobago. Mr. Herrera, like all other asylum-seekers and refugees, is supported by the LWC and the UNHCR.