

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 26/20, 33/9 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged arbitrary detention and discrimination on the basis of disability of more than 500 persons with psychosocial disabilities in conflict with the law who have been placed under "security measures" in the States of Minas Gerais and Rio de Janeiro, which entails institutionalization in Custody Hospitals for Psychiatric Treatment or deprivation of liberty in regular detention centers where they lack access to adequate healthcare and in general detention conditions are unsatisfactory, which may amount to cruel, inhumane or degrading treatment or punishment.**

These include five men with psychosocial disabilities who are detained to date in the State of Minas Gerais: Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED]; and six men with psychosocial disabilities in the State of Rio de Janeiro: Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED].

According to the information received:

Under the Brazilian Penal Code, when a person is found not criminally liable for criminal acts s/he has committed because of the lack of mens rea due to impairment, s/he is automatically held under a "security measure" ("medida de segurança") and may be detained in a Custody Hospital for Psychiatric Treatment (CHPT) (arts 96 and 97). To grant this measure, a judge must determine retrospectively whether the accused was able to understand the nature of the acts

at the time of commission (art. 26). The imposition of this measure is based on the assumption that such individuals represent a danger to society and must therefore be isolated. Therefore persons with disabilities who are found to be not criminally liable on the basis of impairment are automatically deprived of their liberty.

Individuals under security measures are routinely detained indefinitely in Brazil, as the Penal Code does not set a time limit for such measures. In the States of Minas Gerais and Rio de Janeiro alone, there are more than 500 persons with psychosocial disabilities deprived of their liberty under this regime: 223 in the CHPT Henrique Roxo and CHPT Roberto Medeiros in the State of Rio de Janeiro (as of July 2016), and 287 in regular detention centers in the State of Minas Gerais (as of April 2015).

National courts in Brazil have recognized the widespread practice of indefinite detention as a violation of national law. Furthermore, the Superior Court of Justice (“Superior tribunal de Justiça”) held that the duration of the security measure must not exceed the maximum limit of the sentence possibly imposed on a person found criminally liable. In practice, persons with psychosocial disabilities are deprived of their liberty for much longer periods than the maximum possible sentence for the crime in question; and even when formally acquitted, they continue to be detained until a judge declares that they are no longer “dangerous”. To revoke a security measure, a court must first accept the conclusion of a medical assessment informing that the “dangerousness of the individual has ceased”. Even when a medical assessment confirms the “cessation of dangerousness”, the judiciary often keeps persons with disabilities detained indefinitely.

Furthermore, Federal Law 10.216/01, Resolution 05/2004 of the National Council on Criminal and Penitentiary Policy, and Ministerial Order 52/2004 set up a framework for deinstitutionalization, providing for the progressive decrease and abolition of psychiatric hospitals, including Custody Hospitals for Psychiatric Treatment. Law 10.216/01 specifically prohibits the institutionalization of persons with psychosocial disabilities in facilities that violate their human rights, and only allows it when strictly justified and as a last resort when “outpatient treatment” proved insufficient.

In the State of Rio de Janeiro, Custody Hospitals for Psychiatric Treatment are run by the Department of Penitentiary Administration rather than medical personnel, and internees are confined in their cells, sometimes for 23 hours a day without access to adequate support, creating intense mental and physical suffering. Persons with psychosocial disabilities held under security measures do not have the opportunity to have access to the public health system and support services in the community on an equal basis with others, unless a court considers that their

“dangerousness” has ceased. However, multidisciplinary teams, including health professionals, often refrain from issuing a medical assessment indicating that the “dangerousness” of the individual has ceased for reasons totally unrelated to the person’s health situation.

In the State of Minas Gerais, persons held under security measures are detained in regular detention centers, in contravention with national law. The Superior Court of Justice ruled in several cases that it is illegal to detain a person under security measure in a regular detention center, even when there is allegedly no space available in other facilities (see for instance RHC 38.499-SP (2014) or RHC 81.959-MG (2008)). Persons with disabilities held under security measures are also excluded from the Comprehensive Assistance Programme for Persons with Psychosocial Disabilities (“Programa de Atenção Integral ao Paciente Judiciário Portador de Sofrimento Mental”) of the State of Minas Gerais, which seeks to refer persons with disabilities in conflict with the law to the public health system.

The following individual cases are illustrative of the pattern of discrimination on the basis of disability and prolonged arbitrary detention resulting from the imposition of “security measures” on at least 500 persons with psychosocial disabilities in the States of Rio de Janeiro and Minas Gerais.

State of Rio de Janeiro

Mr. [REDACTED]

Mr. [REDACTED] is deprived of his liberty since 12 August 2012, when he was arrested for attempted theft of a handbag. On 12 August 2013, he was subjected to a medical assessment, which concluded that he had paranoid schizophrenia and was not capable of appreciating the illicit nature of his acts at the time of commission. On 15 November 2013, the first instance tribunal found him not criminally liable and imposed a security measure.

On 15 May 2015, a multidisciplinary team of the CHPT Henrique Roxo concluded that although Mr. [REDACTED] was “relatively stabilized, through the continuous use of his medication”, the fact that his family was not willing to receive him at home represented an obstacle to his release.

On 14 September 2015, the Public Defender Office of the State of Rio de Janeiro requested the tribunal to declare the “punishability” (“punibilidade”) of Mr. [REDACTED] extinct and to revoke the security measure, arguing that the Superior Court of Justice ruled that no one can be detained under security measures for a reportedly longer period than the maximum sentence s/he could be imposed if

found criminally liable. On 18 September, the tribunal decided to maintain the security measure.

On 26 November 2015, the Public Defender Office submitted another request to extinct Mr. [REDACTED] "punishability". The tribunal refused to revoke the security measure on 2 February 2016 and confirmed that Mr. [REDACTED] would continue to remain detained indefinitely, despite the jurisprudence of the Superior Court of Justice.

On 31 August 2016, Mr. [REDACTED] was still detained at the Custody Hospital Henrique Roxo. Until then, he had spent one year, four months and 20 days in detention, reportedly in excess of the maximum sentence he could have served if he were to be found liable for the acts committed.

Mr. [REDACTED]

Mr. [REDACTED] is detained since 16 January 2014 for having caused bodily harm to his mother. If found liable, he could be detained for a period ranging from one month and ten days to two years and eight months and the sentence could be reduced to one to two-thirds if declared not entirely liable, therefore a maximum sentence of two years. On 25 March 2014, he was transferred to the Custody Hospital Roberto Medeiros. A medical assessment stated he had unspecified nonorganic psychosis.

On 4 September 2014, the first instance tribunal found Mr. [REDACTED] not entirely criminally liable ("semi-imputável") for the acts he committed and imposed a security measure, which was partly justified on the judge's "personal impression" of the accused. On 28 May 2015, the Public Defender Office requested the tribunal to nullify the decision imposing a security measure on Mr. [REDACTED], because the judge violated the law by imposing a security measure on someone found to be not entirely liable, which was denied.

On 18 May 2016, the Public Defender Office reiterated its request to the tribunal to declare the sentence null, and the latter has not yet pronounced itself on the matter. As of 31 August 2016, Mr. [REDACTED] continued to be deprived of his liberty at CHPT Henrique Roxo and spent 211 days in detention in excess of the maximum sentence he could have served as a person not entirely liable for the acts committed.

Mr. [REDACTED]

Mr. [REDACTED] is deprived of his liberty since 21 July 2011, when he was arrested for assault and qualified mischief. If found liable, he could be detained for a period ranging between nine months and four and a half years.

On 26 January 2012, Mr. [REDACTED] was subjected to a medical assessment, which concluded that he had paranoid schizophrenia and was not capable of appreciating the illicit nature of his acts at the time of commission. On 11 April 2012, the first instance tribunal found him not criminally liable and imposed a security measure.

On 11 September 2014, a psychiatrist at the Forensic Institute Heitor Carrilho undertook a "cessation of dangerousness exam" and concluded that Mr. [REDACTED] "presents the clinical conditions for the suspension of his internment." This conclusion was reaffirmed by the same psychiatrist on 11 February 2015.

On 7 April 2015, the tribunal agreed to suspend Mr. [REDACTED] internment, recognizing that he should be relocated to a therapeutic residence and continue his treatment in a psychosocial care center. However, on 9 April the tribunal declared that Mr. [REDACTED] could not leave the Custody Hospital until he would be admitted to a therapeutic residence in the city of Niterói.

On 18 February 2016, Mr. [REDACTED] was finally released, but the security measure remains in force. Consequently, he could be detained at any moment if deemed "dangerous", and his liberty is strictly limited by the suspension of internment order issued by the tribunal. Accordingly, Mr. [REDACTED] must perform a lawful profession, request an authorization from the judge to travel outside the State of Rio de Janeiro, go to the Psychosocial Care Center ("Centro de Atenção Psicossocial"), report any change of residency, be home by 10 pm and refrain from attending gambling houses or forbidden places.

Mr. [REDACTED]

Mr. [REDACTED] is deprived of his liberty since 17 April 2011, when he was arrested for attempted qualified homicide. If found liable, Mr. [REDACTED] could be detained for a period ranging from four to 20 years.

On 9 March 2012, Mr. [REDACTED] was subjected to a medical assessment, which concluded that he had paranoid schizophrenia and was not capable of appreciating the illicit nature of his acts at the time of commission. On 28 August 2012, the first instance tribunal found him not criminally responsible for the acts he committed and imposed a security measure.

On 25 November 2014, a multidisciplinary team of the CHPT Henrique Roxo confirmed that Mr. [REDACTED] was fit to receive outpatient treatment. On 11 May 2015, a psychiatrist at the Forensic Institute Heitor Carrilho undertook a "cessation of dangerousness exam" and confirmed that Mr. [REDACTED] could benefit from "outpatient treatment".

On 14 July 2015, the tribunal declared the suspension of Mr. [REDACTED] internment, and requested his relocation to a therapeutic residence in the municipality of Duque de Caxias within 30 days and treatment at a psychosocial care center. On 5 August 2015, the Department of Health of the municipality of Duque de Caxias requested a 30 days extension to secure a place for Mr. [REDACTED] due to lack of space. On 16 October 2015, the tribunal requested the municipality to inform whether Mr. [REDACTED] had been granted a place in a care center.

Mr. [REDACTED] was eventually released on 18 February 2016, but the security measure remains in place. He could be detained at any moment if deemed "dangerous" and his liberty is strictly limited by the suspension of internment order issued by the tribunal. Accordingly, Mr. [REDACTED] must perform a lawful profession, request an authorization from the judge to travel outside the State of Rio de Janeiro, go to the Psychosocial Care Center, report any change of residency, be home by 10 pm and refrain from attending gambling houses or forbidden places.

Mr. [REDACTED]

Mr. [REDACTED] was deprived of his liberty on 22 January 2008, when he was arrested for rape. If found liable, he could be detained for a period ranging from eight to 12 years.

On 19 May 2008, Mr. [REDACTED] was subjected to a medical assessment, which concluded that he had paranoid schizophrenia and was not capable of appreciating the illicit nature of his acts at the time of commission. On 12 November 2008, the first instance tribunal found him not criminally responsible for the acts he committed and imposed a security measure.

On 10 October 2013, the multidisciplinary team of HCTP Henrique recommended to release Mr. [REDACTED], relocate him in a shelter administrated by the municipality of Rio de Janeiro and get treatment in a psychosocial care center. On 15 October 2013, a psychiatrist of the HCTP Henrique Roxo undertook a "cessation of dangerousness exam" and confirmed that Mr. [REDACTED] "dangerousness had ceased", and that he did not require hospitalization.

On 22 July 2014, the tribunal suspended Mr. [REDACTED] internment and requested the municipality of Rio de Janeiro to grant him a place in a shelter and receive treatment in a psychosocial care center. Despite this, Mr. [REDACTED] continued to be deprived of his liberty. On 3 October 2014, 25 November 2014 and on 6 April 2015, the tribunal reiterated many request to relocate Mr. [REDACTED] outside of the penitentiary system, which remained unaddressed.

On 3 July 2015, the Public Defender Office of the State of Rio de Janeiro requested the tribunal to revoke the security measure imposed on Mr. [REDACTED], enforce its decision to suspend his internment and provide him with accommodation at CRAF Tom Jobim shelter.

On 23 October 2015, the CHPT Henrique Roxo team assessed that the mental health of Mr. [REDACTED] was negatively affected by his prolonged detention and that it would not improve if he continued to be detained.

On 18 February 2016, Mr. [REDACTED] was finally released, but the security measure remains in place. He could be detained at any moment if deemed "dangerous" and his liberty is strictly limited by the suspension of internment order issued by the tribunal. Accordingly, he must perform a lawful profession, request an authorization from the judge to travel outside the State of Rio de Janeiro, go to the Psychosocial Care Center, report any change of residency, be home by 10 pm and refrain from attending gambling houses or forbidden places.

Mr. [REDACTED]

Mr. [REDACTED] is detained since 5 January 2011 for destruction of private property and threats. If found liable, he could be detained for a period ranging between six months and three years. On 23 August 2011, the tribunal ordered his transfer to a Custody Hospital pending final decision in the criminal process, but he was detained in a regular detention center instead.

On 12 December 2011, the first instance tribunal found Mr. [REDACTED] not criminally liable for the acts he committed and imposed a security measure. In reaching its conclusion, the tribunal referred to a medical assessment stating that he had "persistent delusional disorders", and that despite being able to understand the illicit nature of the act, he was unable to act according to that reasoning. On 29 June 2012, Mr. [REDACTED] was transferred to CHPT Henrique Roxo, after having spent 542 days in a regular detention center.

On 11 October 2012, a multidisciplinary team of CHPT Henrique Roxo advised that his "dangerousness" had no ceased, because he lacked financial resources and a place to live. Two subsequent "cessation of dangerousness exams" conducted on

28 February 2013 and on 27 August 2013 respectively reached the same conclusion.

On 28 April 2015, the Public Defender Office of the State of Rio de Janeiro requested the tribunal to apply the Pardon Decree 8.380/2014 to Mr. [REDACTED], which states that persons under security measures who are deprived of their liberty for a period longer than the maximum sentence they could serve if found criminally liable must be granted pardon. On 20 May 2015, the tribunal granted Mr. [REDACTED] the pardon, but did not issue the administrative order to effect his release until 15 June 2016. Mr. [REDACTED] was eventually transferred from CHPT Henrique Roxo to the public hospital Instituto Municipal Nise da Silveira on 5 July 2016, some 413 days after he was granted the pardon.

State of Minas Gerais

Mr. [REDACTED]

Mr. [REDACTED] is detained since 20 August 2011. During the trial, on 25 March 2012, Mr. [REDACTED] was subjected to a medical assessment, which concluded that he had a psychotic disorder with predominance of polymorphic symptoms and was incapable of understanding the nature of his acts at the time of their commission. On 20 August 2012, the first instance tribunal found him not criminally liable and imposed a security measure.

On 25 June 2012, Mr. [REDACTED] was transferred to the detention center Professor Jacy de Assis, where he remains to date. He's detained in a cell and has no access to a psychiatrist.

On 9 May 2013, the tribunal ordered the Department of Institutional Coordination and Management of Vacancies in the prison system ("Secretaria de articulação institucional e gestão de vagas - SAIGV") to transfer Mr. [REDACTED] to a CHPT within 30 days. On 21 May, the administration of the detention center refused the transfer and informed that he was hosted in the medical department of the prison and was receiving some psychological support.

On 17 October 2014, Mr. [REDACTED] attorney requested his transfer to a Recuperation Clinic in Uberlândia, which was denied on 23 October 2014.

On 19 November 2015 the tribunal again ordered to SAIGV to transfer Mr. [REDACTED] to a CHPT within 30 days. On 15 December, SAIGV replied that Mr. [REDACTED] would be transferred as soon as possible and that he was on the waiting list.

On 18 May 2016, the Public Defender Office of the State of Minas Gerais presented an action of Habeas Corpus requesting the transfer of Mr. [REDACTED] to a regular hospital to access adequate healthcare and psychiatric services (at his explicit request), which was dismissed by the tribunal on 18 July 2016.

Mr. [REDACTED]

Mr. [REDACTED] is detained since 2 December 2012 for homicide in a regular detention centre in the State of Minas Gerais. He shares a cell of approximately 10 m² with another inmate and is not allowed to leave it without permission. He has no access to psychiatric support and is handcuffed when taken to medical appointments.

On 15 August 2013, the first instance tribunal found him not criminally liable and imposed a security measure. To date, he has not been subjected to a “cessation of dangerousness exam”, despite a request made by the Public Defender’s Office of the State of Minas Gerais on 10 March 2016. On 21 March 2016, the Public Defender’s Office submitted an action of collective Habeas Corpus requesting the transfer of Mr. [REDACTED] to a general hospital. The tribunal rejected the request for an injunction and has yet to decide on the merit.

Mr. [REDACTED]

Mr. [REDACTED] is detained since 1 July 2012 in the regional detention centre Teófilo Otoni in the State of Minas Gerais. He shares a cell of approximately 40 m² with 17 other detainees and he is not allowed to leave it without permission. His access to water is limited to 10 minutes in the morning, 5 in the afternoon and 10 at night, when water runs through the pipes. He has no access to psychiatric support and is handcuffed when taken to medical appointments.

On 15 April 2013, the tribunal found him not criminally liable and imposed a security measure, while recognizing that he was detained in an inappropriate establishment, and requested his transfer to a CHPT. To date, he has not been subjected to a “cessation of dangerousness exam”.

On 19 November 2014, the team of the “Programa de Atenção Integral ao Paciente Judiciário Portador de Sofrimento Mental” informed the tribunal that the detention center Teófilo Otoni is inappropriate, as it “does not have the structural and technical resources necessary to host individuals with mental health issues”. It recommended his release to access outpatient treatment. On 3 March 2015, the

SAIGV informed the tribunal that Mr. [REDACTED] was on a waiting list to be transferred to a CHPT.

On 21 March 2016, the Public Defender Office of the State of Minas Gerais submitted an action of collective Habeas Corpus requesting the transfer of Mr. [REDACTED] to a general hospital. The tribunal rejected the request for an injunction and has yet to decide on the merit.

Mr. [REDACTED]

Mr. [REDACTED] is detained since 19 June 1987 for homicide. He was found not criminally liable and imposed a security measure. On 19 September 1988, he was transferred to CHPT Jorge Vaz. On 28 September 2006, Mr. [REDACTED] undertook a "cessation of dangerousness exam", which determined that he had residual schizophrenia and that his "dangerousness" had not ceased.

Mr. [REDACTED] is currently detained in a cell with other people under security measures at the "Centro de Apoio Médico Pericial", under the custody of penitentiary agents.

On 17 March 2016, the Public Defender Office of the State of Minas Gerais informed the tribunal of the arbitrary detention of Mr. [REDACTED] in a detention center and requested his transfer to a general public hospital.

Mr. [REDACTED]

Mr. [REDACTED] is detained since 6 February 2000 for attempted homicide. On 20 November 2000, he was found not criminally liable and was imposed a security measure. From 2001 to 2014 he was detained at CHPT Jorge Vaz, then transferred to the detention center Centro de Apoio Médico Pericial. He is detained in a cell together with other people under security measures, under the custody of penitentiary agents.

On 2 February 2014, Mr. [REDACTED] undertook a "cessation of dangerousness exam, which determined that he had paranoid schizophrenia and that his "dangerousness" had not "ceased". The report concluded that he could be granted outpatient treatment should he get access to "good psychosocial support", as his treatment is likely to continue for the rest of his life.

On 17 March 2016, the Public Defender Office of the State of Minas Gerais informed the tribunal of the arbitrary detention of Mr. [REDACTED], in a regular detention center and requested his transfer to a general public hospital.

Without prejudging the accuracy of these allegations, we wish to express our grave concern at the arbitrary detention of more than 500 persons with psychosocial disabilities under “security measures” in the States of Minas Gerais and of Rio de Janeiro (including the 11 individuals mentioned above). We are concerned about their institutionalization in Custody Hospitals for Psychiatric Treatment or their deprivation of liberty in regular detention centers. We further express concern that persons with psychosocial disabilities who are detained in regular detention centers lack access to adequate healthcare and are in general detention conditions that are unsatisfactory, which may amount to cruel, inhuman, or degrading treatment or punishment. We are also concerned about restrictions in the liberty of movement of persons with psychosocial disabilities who have been released, but whose “security measures” remain subjected to assessments of “dangerousness”. In this regard, we are also concerned that generally “security measures” are discriminatory against persons with disabilities and that they can only be reviewed following a medical exam of “cessation of dangerousness”, which may be based on the health situation of the person or not. We finally express concern about delays in the administration of pardons impacting in the length of the detention.

In connection with above alleged facts and concerns, we would like to remind your Excellency’s Government of the applicable international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities may exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably in the enjoyment of the right to liberty and security, equal recognition before the law, access to justice, independent living, health, and freedom from torture or other cruel, inhuman or degrading treatment or punishment.

The above-mentioned facts and concerns appear to be in contravention of the right of persons with disabilities not to be arbitrarily deprived of their liberty and the right to equal recognition before the law as enshrined, *inter alia*, in articles 9 and 14 of the International Covenant on Civil and Political Rights, which Brazil accessed on 24 January 1992, and articles 12 and 14 of the Convention on the Rights of Persons with Disabilities, ratified on 1 August 2008. The Committee on the Rights of Persons with Disabilities has consistently expressed serious concern about the institutionalization of persons with disabilities and urged States to take measures, including the repeal of relevant legal provisions, to abolish the practice of involuntary commitment or hospitalization, and to implement instead effective deinstitutionalization strategies and support services in the community, in consultation with persons with disabilities (see CRPD/C/BRA/CO/1, para. 29; CRPD/C/DOM/CO/1, para. 27).

In relation to “security measures”, the Committee on the Rights of Persons with Disabilities in its concluding observations on the initial report of Brazil (CRPD/C/BRA/CO/1, para. 30) has stated its concern that “persons with disabilities who are deemed not liable for the commission of a crime on the basis of impairment may be

subject to security measures, including indefinite detention”, and recommended to “abolish security measures that involve the arbitrary detention of persons with disabilities on the basis of impairment and implement alternative measures that are consistent with articles 14 and 19 of the Convention”. Moreover, in its Guidelines on article 14 of the Convention, the Committee has expressed concern about “security measures that involve indefinite deprivation of liberty and absence of regular guarantees in the criminal justice system” and recommended eliminating security measures, “including those which involve forced medical and psychiatric treatment in institutions” (para. 20). The Committee has also stressed that the involuntary detention of persons with disabilities based on risk of “dangerousness”, alleged need of care or treatment or other reason tied to impairment or health diagnosis is contrary to the right of liberty and amounts to arbitrary deprivation of liberty (para. 13). Finally, the Committee has also established that declarations of unfitness to stand trial or incapacity to be found criminally responsible in criminal justice systems and the detention of persons based on those declarations are contrary to article 14 of the Convention, since it deprives the person of her or his right to due process and safeguards that are applicable to every defendant (para. 15).

We would also like to remind your Excellency’s Government of its other obligations under international human rights law, in particular the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Brazil ratified on 28 September 1989, and article 15 of the Convention on the Rights of Persons with Disabilities. We furthermore would like to stress that conditions of detention as described above can amount to inhuman and degrading treatment or torture, as consistently found by, among others, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities.

Regarding access to healthcare, we would like to refer your Excellency’s Government to general comment no. 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (para. 34). In addition, the Standard Minimum Rules for the Treatment of Prisoners renamed the “Mandela Rules” establish the provision of care for the physical and mental health of all prisoners, including sick prisoners, those who complain or illness, and any other prisoner who may require it (rule 25(1)). Regarding specialized health care, we would like to draw to the attention of your Excellency’s Government to article 25(b) of the Convention on the Rights of Persons with Disabilities which establishes that States Parties shall ensure access for persons with disabilities to those health services needed by them specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the detention of the more than 500 persons with psychosocial disabilities referred to above and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR, the ICCPR and the CRPD.
3. Please explain what measures have been taken to ensure that persons with disabilities arbitrarily deprived of their liberty in the States of Minas Gerais and of Rio de Janeiro, including the 11 above-mentioned individuals, have access to justice to review the lawfulness of their detention and to obtain appropriate redress and reparation.
4. Please provide information on any measures taken to ensure the physical and psychological integrity of persons with psychosocial disabilities in conflict with the law in the States of Minas Gerais and of Rio de Janeiro, including the 11 above-mentioned individuals.
5. Please explain what legislative and other measures have been taken to ensure that persons with disabilities are no longer placed under "security measures" and subjected to "cessation of dangerousness" exams.
6. Please provide information on the deinstitutionalization process in Brazil, including the detailed plan, timelines, stages, and the alternative support measures available for persons with psychosocial disabilities under "security measures" who are currently detained in Custody Hospitals for Psychiatric Treatment or regular detention centers, including the above-mentioned individuals.
7. Please provide information about the measures taken to provide persons with psychosocial disabilities in regular detention centers with access to adequate healthcare.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Antonio Guevara Bermúdez
Vice Chair of the Working Group on Arbitrary Detention

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