

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of migrants

REFERENCE:
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6 April 2017

Dear Mr. Pettier,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 25/2, 25/18, and 26/19.

In this connection, we would like to bring to the attention of your Government information we have received concerning the confiscation of passport, denial of exit, and threat of deportation from Trinidad and Tobago to Cuba, in violation of the non-refoulement principle, of Mr. **Eduardo E. Herrera**, a Cuban surgeon, journalist, and human rights defender seeking to escape persecution by Cuban authorities, allegedly for expressing dissident opinions through the online media agency *Hablemos Press*.

According to the information received:

Mr. Herrera has been actively engaging with online media in the last five years. He is a regular contributor of *Hablemos Press*, an independent Cuban platform of online journalism, and has collaborated as well with other online media, such as *Translating Cuba* and *Salud en Cuba*, expressing critical views on Cuban politics and in particular on the Cuban health system. For this reason, he was allegedly harassed in his work as a surgeon at the *Calixto García* hospital in Havana, and was ultimately forced to resign and flee Cuba.

On 26 October 2016, Mr. Herrera arrived in Port of Spain's airport from Santa Lucia, with the sole intention of making a transfer to a flight that would take him to Guyana on that same day. However, he was prevented from boarding the plane by the personnel of Caribbean Airlines. He was then taken to an immigration office where the authorities of Trinidad and Tobago confiscated his passport, without presenting any document stating the legal reasons for doing so. Allegedly, he was told that he would get his passport back if he agreed to be sent back to Cuba, which he refused, claiming persecution by his government.

Mr. Herrera has since then been summoned by the immigration authorities on a monthly basis, under the legal figure of conditional release, apparently pending a procedure pursuant article 8 of the Immigration Act, which prohibits the entry to Trinidad and Tobago of several broadly defined categories of persons, including persons which "in the opinion of the Minister [are] likely to be an undesirable inhabitant or visitor". Reportedly, this procedure could end in a decision by the authorities of Trinidad and Tobago to finally send him back to Cuba. Accordingly,

Mr. Herrera has filed an asylum claim before the representative of the United Nations High Commissioner for Refugees in Trinidad and Tobago, whose decision is still pending.

During his time in Trinidad and Tobago, Mr. Herrera's legal situation has prevented him from finding the means to secure his livelihood. Employers have repeatedly refused to consider his applications in view of the absence of any official ID or work permit, and he has been rejected by employers in the health sector due to a policy of not hiring Cuban doctors that arrive in Trinidad and Tobago by their own means, independently of the agreements of medical assistance between Trinidad and Tobago and Cuba.

Serious concern is expressed at the confiscation of passport, the denial of exit from Trinidad and Tobago of Mr. Eduardo E. Herrera, and the monthly summons of him by the immigration authorities. Furthermore, grave concern is expressed at the possibility that Mr. Herrera is deported back to Cuba, which would place him again at risk of persecution, considering prior persecution by Cuban authorities against him for his human rights activities, including as a human rights defender, and the exercise of his right to freedom of expression. Concern is likewise expressed regarding the uncertain legal situation in which he finds himself in Trinidad and Tobago, which prevents him from securing a stable livelihood, or from continuing his travels to a third country where he may find safehaven.

Similarly, grave concern is expressed regarding the very broad grounds for refusing entry and for deporting foreigners established in Trinidad and Tobago's Immigration Act. These provisions, mainly laid out in article 8 of the Act, open the possibility to use discriminatory and political criteria to allow or restrict entry to the country, placing refugees under the risk of deportation in violation of the state's obligation under the principle of non-refoulement.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law**, attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide clear information on the legal basis for confiscating the passport of Mr. Herrera and for refusing his exit from Trinidad and Tobago.
3. Please explain what measures are in place to ensure an individual assessment is conducted in every return decision in accordance with the principle of non-refoulement.
4. Please provide additional information regarding the measures adopted to ensure that Mr. Herrera is not forcibly returned back to Cuba, where he faces a high risk of persecution for his activities as a journalist and human rights defender.
5. Please provide information on the measures adopted to ensure that the legal situation of Mr. Herrera is rendered clear and in a manner which is compatible with his fundamental human rights.

We would appreciate receiving a response within 60 days.

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(s) responsible for the alleged violations.

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

Please accept, Mr. Pettier, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

François Crépeau
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

In particular, we would like to remind your Government of article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Trinidad and Tobago in 1978, which enshrines the right of everyone to hold opinions without interference. While this obligation should be understood as mainly requiring States not to directly interfere with this freedom in relation to individuals under their jurisdiction, the Human Rights Committee acknowledged in its General Comment No. 31 that States also have a duty not to expose anyone to the undue restriction of their freedoms by other governments, for example by deporting them to a country where their rights would not be respected (CCPR/C/21/Rev.1/Add.13).

Similarly, it seems pertinent to recall article 12 of the ICCPR, which enshrines the freedom of movement, and in particular the right of all persons to leave any country. Likewise, article 13 determines that an alien has the right to be heard before the competent authority in cases of expulsion. As the Human Rights Committee determined in General Comment No. 31, the principles of impartiality, fairness and equality of arms stated in article 14 are also applicable in cases of deportation “where expulsion takes the form of a penal sanction or where violations of expulsion orders are punished under criminal law”.

We would also like to refer your Government to paragraph 9 of the General Comment No. 20 of the Human Rights Committee, which states that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. We further would like to draw the attention of your Government to paragraph 16 of the resolution A/RES/65/205 of the UN General Assembly which urges States “not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.”

It is also an obligation assumed by your Government through article 33 of the Geneva Convention Relating to the Status of Refugees and its Protocol of 1967, acceded to by Trinidad and Tobago in 2000, to refrain from expelling or returning any person who may be a refugee or otherwise be in need of international protection to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Lastly, we would like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society

to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.