

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
AL TTO 2/2017

21 July 2017

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; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 33/30, 35/6 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the deprivation of liberty of Mr. **Zaheer Seepersad** in the St Ann's Psychiatric Asylum, as well as that of other individuals, under allegations of having a psychosocial disability.

According to the information received:

On 8 January 2015, Mr. Zaheer Seepersad, a national of Trinidad and Tobago, born in 1987 and who has a physical impairment (*dystonia*), was deprived of liberty on Llanos Street, Arima, Trinidad. He was subsequently detained in the St Ann's Psychiatric Asylum, under the Trinidad and Tobago Mental Health Act of 1975, which allows for the involuntary commitment and treatment of an individual with psychosocial disabilities "in the interest of his health and for the safety and protection of others, or either of them" (section 7 (2)(a)). In these cases, the said Act requires the issuance of a medical certificate by a registered practitioner, which must support the allegations of a mental condition made by families against their relatives, in order to allow the internment in the asylum (section 7 (2)(b) and section 10).

Mr. Zaheer Seepersad has reportedly not been diagnosed with any mental condition by the doctors who have examined him in the past. Allegations were made indicating that an employee of the St Ann's Psychiatric Asylum issued a medical certificate regarding his mental condition without previously examining Mr. Seepersad, and handed it over to his family, thus allowing for his detention for the subsequent two months.

In addition, it was reported that, on 4 May 2016, Mr. Zaheer Seepersad was again deprived of his liberty in Enterprise, Chaguanas, Trinidad, and again involuntarily committed in the St Ann's Psychiatric Asylum. This time, the detention was not even supported by any certificate, issued by a medical professional, as required by sections 7 and 10 of the Mental Health Act. This deprivation of liberty allegedly lasted for sixteen days.

Furthermore, it was alleged that Mr. Zaheer Seepersad's family prevented him from applying to the High Court of Trinidad and Tobago, under section 14 of the Constitution, to seek a remedy for the violations of his constitutional rights. Similarly, it appears that his family also prevented him from making a complaint before the Medical Board of Trinidad and Tobago, under article 25 (5) c) of the Medical Board Act.

Finally, the case of Mr. Zaheer Seepersad does not appear to be neither an isolated, nor a recent case, but rather an illustration of a common practice in the St Ann's Psychiatric Asylum. Reportedly, doctors in the Assessment and Admission Centre of the institution have been for years institutionalising persons with - or perceived to have - disabilities. In this context, the former Health Minister declared in 2012 that around 500 of the 822 individuals in the St Ann's Hospital were institutionalized due to the lack of social support. According to him: "Sixty per cent of the patients do not need to be here and they are just social cases where the family themselves do not want to take responsibility for the patient."¹

While we do not wish to prejudge the accuracy of the allegations made above, we express concerns for the deprivation of liberty of Mr. Zaheer Seepersad. In addition, the allegations that the case of Mr. Zaheer Seepersad follows a general pattern of systemized practice of detentions is also cause of our most serious concerns. Persons with disabilities cannot be deprived of their liberty unlawfully or arbitrarily. Any deprivation of their liberty must be in conformity with the law, and an actual or perceived impairment cannot justify a deprivation of their liberty. Concerns are also expressed on the allegations that the individuals deprived of their liberty are being prevented from instituting proceedings and seeking remedies before a court.

In this context, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right not to be deprived arbitrarily of the liberty and to fair proceedings before an independent and impartial tribunal, in accordance with article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights and article 14 of the Convention on the Rights of Persons with Disabilities.

¹ Daily Express, Madness at St Ann's, 23 March 2012.

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.

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 and procedural grounds for the deprivation of liberty of Mr. Zaheer Seepersad and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities.
3. Please provide information on the safeguards that guarantee the right to access to an effective remedy by the courts of the country against the violations of fundamental rights.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information about the existence of national independent complaints and monitoring mechanisms, which are mandated to visit places where persons with disabilities are or might be deprived of their liberty, to prevent and to act on situations of human rights violations.
6. Please provide information regarding the implementation of deinstitutionalization processes in Trinidad and Tobago, including the detailed plan, timelines, stages, and the alternative support measures available for persons with disabilities who have been or are in the process of being deinstitutionalized.
7. Please provide information regarding any legislative reform processes and other measures taken to prevent coercion in mental health hospitals and to ensure that persons with disabilities always provide their free and informed consent for any medical treatment.

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 responsible of the alleged violations.

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

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 consider the case through its regular procedure, in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals 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.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

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:

Articles 3, 8 and 9 of the Universal Declaration of Human Rights, respectively, enshrines the rights to life, liberty and security of the person; the right to an effective remedy by a competent national tribunal for acts committed in violation of fundamental rights; as well as the right to not be subjected to arbitrary arrest, detention or exile.

Article 9 of the International Covenant on Civil and Political Rights, to which Trinidad and Tobago acceded on 21 December 1978, states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Furthermore, paragraph 4 of the same article 9 states that anyone deprived of his liberty is entitled to bring proceedings before a court, for it to determine the legality of such detention or to order the release of the person concerned.

Article 14 of the Convention on the Rights of Persons with Disabilities, to which Trinidad and Tobago is a party since 25 June 2015, requires that all persons with disabilities enjoy the right to liberty and security of person on equal basis with others. Moreover, Article 14 (1) (b) requires that all State parties take measures to ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily, that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty. In addition, article 12 of the same Convention guarantees the right of persons with disabilities to make autonomous decisions and have those decisions respected, while article 25(d) recognize their right to free and informed consent prior to any medical intervention or treatment.

In this regard, the Committee on the Rights of Persons with Disabilities has established in its Guidelines on article 14 of the Convention - adopted during its 14th session held in September 2015 – that this article does not allow any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. Any legislation providing instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other grounds for their detention, including that they are deemed dangerous to themselves or others, are discriminatory in nature and amount to arbitrary deprivation of liberty (para. 6).

Furthermore, article 19 of the Convention on the Rights of Persons with Disabilities recognizes the equal right of all persons with disabilities to live in the community, with choices equal to others. It also requires States to take effective and appropriate measures to facilitate the full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community. Persons with disabilities

must have the opportunity to choose their place of residence, where and with whom they live, on an equal basis with others. They cannot be obliged to live in a particular living arrangement (art. 19 (a)); and must have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community (art. 19 (b)).

We would like to further draw the attention of your Excellency's Government to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly resolution 43/173 of 9 December 1988). In particular, to principle 4, which establishes that any measure affecting the human rights of persons under detention shall be ordered by, or subject to the effective control of, a judicial or other authority. Also, principle 5 (2) indicates that legal measures designed solely to protect the rights and special status of sick or handicapped persons shall not be deemed to be discriminatory and the need for, and the application of, such measures shall always be subject to review by a judicial or other authority. Furthermore, principle 11 (1) states that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

In addition, we would like to highlight certain key aspects of Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court, (adopted by the Working Group on Arbitrary Detention during its 72nd sessions, held in April 2015). According to such Principles and Guidelines, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty, including internment in psychiatric institutions. In this context, principle 1 states that everyone is guaranteed the right to take proceedings before a court, in order that that court may decide on the arbitrariness or lawfulness of the detention, and obtain without delay appropriate and accessible remedies. Principle 17 requires the adoption of specific measures to ensure meaningful access to the right to bring proceedings before a court by certain groups of detainees, which includes persons with disabilities, comprising those with psychosocial and intellectual disabilities. Principle 20 recalls the State's obligation to prohibit involuntary committal or internment on the grounds of the existence of an impairment or perceived impairment, particularly on the basis of psychosocial or intellectual disability or perceived psychosocial or intellectual disability, as well as with their obligation to design and implement de-institutionalization strategies based on the human rights model of disability. (A/HRC/30/37).

Finally, we would like to bring to the attention of your Excellency's Government the recent report issued by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, where he

addressed the issue of mental health (A/HRC/35/21). In such report, the Special Rapporteur analyses the legal framework protecting the mental health of individuals, in particular the standard set by the Convention on the Rights of Persons with Disabilities on the absolute prohibition of involuntary detention based on impairment and the elimination of forced treatment, making calls for strengthened mental health policies and services without delay. In addition, we recall the UN Special Rapporteur on torture annual report of 2008 to the General Assembly, on the situation of persons with disabilities, who are frequently subjected to neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence. In this regard, the Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty (A/63/175).