

Mandates of 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 the negative impact of unilateral coercive measures on the enjoyment of human rights

REFERENCE:
AL SAU 6/2018

16 August 2018

Excellency,

We have the honour to address you in our capacities as 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 the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolutions 35/6, 33/9 and 36/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of a Qatari national, ██████████ a three-year-old boy with disabilities who has allegedly been denied entry into Saudi Arabia together with his father Mr. Sultan Jassim Al-Ma'adid, due to the travel ban imposed on all Qatari nationals since June 2017. This has resulted in precluding ██████████ from continuing to access the essential healthcare and rehabilitation services in Saudi Arabia that he was receiving prior to the travel ban, that are not currently available in the State of Qatar.

According to the information received:

Jassim Al-Ma'adid, born on 8 January 2015, has severe thoracic scoliosis. On 24 November 2016, upon medical examination, the doctors indicated that, in spite of all the interventions ██████████ was receiving at the Hamad Hospital in Doha, the scoliosis was progressing rapidly. The doctors reported that ██████████ required several spinal cord operations and highly specialized medical treatment and rehabilitation, which were not available in the State of Qatar.

On 24 November 2016, ██████████ began to receive treatment at the Al-Dalah hospital in Riyadh, accompanied by his father, a Qatari national, Mr. Sultan Jassim Al-Ma'adid. In December 2016, the doctors performed a first surgery, using the vertical expandable prosthetic titanium rib (VEPTR). A schedule of successive operations to lengthen the curved metal rod was established. In April 2017, ██████████ underwent a second operation and a third operation was planned for July 2017, at the same hospital.

On 5 June 2017, the Kingdom of Saudi Arabia severed ties with the State of Qatar, asked all Qatari nationals to leave Saudi Arabia and closed its borders for

their travel to and from Qatar.¹ Following the 5 June 2017 order, ██████████ ██████████ was denied entry into the Kingdom of Saudi Arabia and was not able to travel for his third operation.

In searching for alternatives, the family contacted a hospital in Germany that provides similar healthcare and rehabilitation services; but the hospital could not schedule ██████████ for an operation within a reasonable timeframe. In addition, ██████████'s deteriorating health condition made it increasingly difficult for him to sustain long-distance travel. As a result, he was forced to discontinue his medical treatment, leading to negative health consequences and severe pain that could have been avoided had he been allowed to continue his medical treatment and rehabilitation in Riyadh.

With delay, ██████████ had an operation on 11 September 2017 at a hospital in Turkey. However, due to the differences in the applied treatment methodologies and technologies, the doctors had to perform a major revision surgery to replace the VEPTR installed at the Al-Dalah hospital in Riyadh with a different rod system. This inflicted unnecessary additional pain on Jassim.

To date, the Government of Qatar remains unable to provide the essential healthcare and rehabilitation services ██████████ needs in order to prevent his health from further deteriorating and assist him in gaining his independence. Under these circumstances, his health and rehabilitation remain dependent on being allowed to cross the border to Saudi Arabia to continue receiving the services in conformity with the plan developed by the team of doctors at the Al-Dalah hospital in Riyadh.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned about the deteriorating health of ██████████ and the denial of entry into Saudi Arabia in order for him to have continued access to essential healthcare and rehabilitation services. We would like to recall that, while we recognize that States have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect and protect the human rights of all individuals regardless of their nationality, origin or immigration status. Beyond its declared intention, the suspension of freedom of movement between the Kingdom of Saudi Arabia and the State of Qatar bears a negative impact on the realization of human rights by individual persons, including the right to physical and mental health.

While States continue working on identifying a sustainable solution to the current situation, we would like you to consider granting access to ██████████ and his father entry into the Kingdom of Saudi Arabia to access the essential healthcare and rehabilitation services he needs.

We hope that this letter provides an opportunity to engage in an open, constructive and human rights-based dialogue with your Excellency's Government. We thank your Excellency's Government for its attention on this important matter and make ourselves

¹ General Assembly 72nd Session, see GA/11952 <https://www.un.org/press/en/2017/ga11952.doc.htm>

available to provide any additional information or assistance on the issues raised in this letter.

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 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 information about the legal framework and policies to address discrimination against persons with disabilities regarding their right to health.
3. Please include information about the available remedies of which persons with disabilities can avail themselves when their rights are violated.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

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

Idriss Jazairy

Special Rapporteur on the negative impact of unilateral coercive measures on the
enjoyment of human rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government attention to their human rights obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD), acceded by the Kingdom of Saudi Arabia on 23 September 1997 and the Convention on the Rights of the Child (CRC), acceded on 26 January 1996.

Non-discrimination is an immediate and crosscutting obligation, which is a fundamental component of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights and is not bound by citizenship. Article 5(e) of the CERD requires that State parties guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Convention.

General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination states that the principle of non-discrimination applies to everyone in relation to various rights within article 5 of the Convention, which includes the right to public health and medical care. Although the Committee does recognize that some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons (para. 3).

Furthermore, the International Court of Justice (ICJ) in *Qatar v. United Arab Emirates* has addressed the denial of entry to all Qatari nationals into the United Arab Emirates by applying provisional measures based on Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination. The ICJ has found that measures targeting all individuals within a group without providing for individual circumstances can amount to discrimination under Article 5 of CERD, which prohibits discrimination in the enjoyment of a variety of civil and political rights and economic, social and cultural rights, including the right to public health and medical care (para. 54, 58). In addition, the ICJ addresses that economic, social and cultural rights, which include the right to public health and medical care, are of such a nature that prejudice to them is capable of causing irreparable harm (para. 67).

We would like to also bring the attention of your Excellency's Government to CRC article 24.4 which establishes children's right to health and indicates that States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of children's right to health. In this connection, we would also like to refer to Human Rights Council resolution 23/3 on the Enhancement of international cooperation in the field of human rights, which "recognizes that, in addition to their separate responsibilities to their individual societies, States have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level" (para 2).