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Mandate of the Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members

REFERENCE:
AL BRA 9/2021

7 October 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members, pursuant to Human Rights Council resolution 44/6.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the human rights violations arising from the compensation process being applied in the Brazilian State of Minas Gerais for children separated from their parents affected by leprosy, also known as Hansen's disease**.

According to the information received:

Due to a public health policy between 1923 and 1986, the Decree 16.300/1923 compulsorily discriminated against, and segregated, people with Hansen's disease. This law was changed in 1949 (Law. No. 610), and then repealed in 1968 (Law 5.5.11), but the practices continued until 1986 by federal and state governments. Brazil acknowledged the damage caused by this policy on the persons affected by Hansen's disease with, among others, Federal Law 11.520/2007.

Through this compulsory isolation policy, thousands of children of persons affected by Hansen's disease were separated from their parents, many at birth, and they grew up without any contact with their biological parents. Further, many were also confined in institutions created by the State for their segregation from society, which were known as "preventórios". Despite the State's obligation to ensure the children integral protection, many of them were submitted within these institutions to slave labor, sexual abuses and other forms of physical and psychological violence.

The Brazilian State of Minas Gerais passed Bill 4828/2018, (authored by the former State Councilman Antonio Jorge de Minas Gerais, who is also an MD), which provided for reparation for the serious violations committed by the State of Minas Gerais and the Brazilian State, through a monthly Special Lifetime Pension of one and a half minimum wage, or approximately R$ 1,650.00. This proposal was then amended by the creation of the Law of the State of Minas Gerais nº. 23.137/2018.

The Legislative Assembly of the State of Minas Gerais, through its Constitution and Justice Commission - (CCJ) changed the initially proposed lifetime pension to a single restitution, without stipulating the amount for payment. Law 23.137/2018 was limited to only apply to children who were put in educational and preventive institutions. This leads to the exclusion of children who were separated from their parents, who were sent to other destinations (such as being sent to rental families hired by their parents affected by Hansen's disease to take care of their children, or who were excluded from these institutions for any other reason, including being sent to so-called leper colonies. The law also excludes anyone earning more than four times the national minimum wage; this application of income testing for an indemnity violates the constitutional principle of equality before the law of all persons. These exclusions are not applicable to the Federal pension available under Law 11.520/2007.

The Law 23.137/2018 is regulated by Decree 47.560/2018. This decree provides that restitution should be tied to the suffering of the individual, suggesting that the institutionalization and suffering of the children must be quantified, and apparently requiring additional testimony from victims.

Neither this law nor the decree provide for the value of any indemnity to be paid. Despite this, the Constitution and Justice Commission of Minas Gerais decided to offer a single payment of R$14,000 to victims, subject to a waiver of any further compensation. Further, it is not clear that this commission has the legal authority under Decree 47.560 of 2018 to determine this amount.

This amount is significantly lower than amounts awarded to other victims in Brazil in comparable cases. In 2019, in case no. 5024703-73.2015.4.04.7100 of Special Appeal n. 1,689,641/RS, the Superior Court of Justice awarded 2 victims compensation in the amount of R$ 50,000.00. In October 2020, the Federal Regional Court of the 3rd Region, which has jurisdiction over the federated states of São Paulo and Mato Grosso do Sul, awarded a person separated from parents with Hansen's disease R$ 65,000.00 in Civil Appeal 5001270-92.2018.4.03.6120.

In the state of São Paulo, Bill no. 1,214/2019 has proposed a compensation of R$ 50,000.00 to children separated from parents with leprosy. This bill has already been approved by two legislative committees and is anticipated to be finalized in 2021.

Without prejudging the accuracy of the information received, concern is expressed at the above allegations. I am deeply concerned that Law 23.147/2018 and its decree discriminate unfairly against children of persons affected by Hansen’s disease who were not sent to educational and preventative institutions.

I am further concerned that the offered compensation of R$14,000.00 is an amount which is insufficient to meet the lifetime needs of the victims, and is vastly lower than amounts which have been awarded by courts and legislation in Brazil. I am deeply concerned that the required waiver against further claims, demanded when victims are facing additional hardships during the ongoing COVID 19 pandemic, is both coercive and discriminatory against the actual rights of victims, as has been shown by recent court cases. The requirement of a waiver against further claims in order to receive this compensation clearly indicates that Government authorities are aware that this amount would not withstand scrutiny by Brazilian courts or other bodies.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would 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 on how the exclusion of children of persons affected by Hansen's disease from compensation by the State of Minas Gerais meets Brazil's international human rights obligations.

3. Please provide information on why the compensation awards are not in accordance with amounts being provided by other courts and jurisdictions in Brazil. In addition, please indicate why such lower compensations do not violate the Brazilian constitutional principles of proportionality, and of equality of all before the law.

4. Please indicate what steps are being taken to provide rehabilitation to people who have been affected by their separation from parents in connection with Hansen's disease, and what steps are being taken to address their psychosocial needs.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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 my highest consideration.

Alice Cruz
Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members

Annex
Reference to international human rights law

Persons affected by leprosy and their family members are entitled to all rights and freedoms enshrined in international human rights instruments. The enjoyment of human rights by persons affected by leprosy and their family members must be fulfilled under the principles of dignity, equality and non-discrimination. In this connection, I would like to refer your Excellency's Government to the main legal obligations arising from the Universal Declaration of Human Rights (UDHR), the Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD) adopted and ratified by Brazil on 10 December 1948, 24 January 1992, 27 March 1968 and 1 August 2008 respectively, as some of the international human rights instruments that protect persons affected by leprosy and their family members.

In particular, article 23, par. 4 of the Convention on the Rights of Persons with Disabilities (CRPD) lists, among effective and appropriate measures to eliminate discrimination against persons with disabilities, the obligation of States Parties to "ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents".

I would also like to refer that the recognition of persons affected by leprosy and their family members as a marginalized and mostly forgotten segment of population that experience multiple discrimination and violation is recognized in the resolution 65/215 on the elimination of discrimination against persons affected by leprosy and their family members adopted in 2010 by the General Assembly, accompanied by the "Draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members"

The "Draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members" make reference to already existing obligations due to Member States that ratified international human rights treaties and conventions. In accordance, it clarifies the normative content of the international human rights instruments and provides guidance on how to enforce human rights in the specific context of systemic and structural discrimination and violation of this particular population.

As such, it aims at putting into practice the General Comment nº 20 of the Committee on economic, social and cultural rights about substantive discrimination that acknowledges: "(b) Substantive discrimination: Merely addressing formal discrimination will not ensure substantive equality as envisaged and defined by article 2, paragraph 2. The effective enjoyment of Covenant rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination."

Similarly, the "Draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members" provides that persons affected by leprosy and their family members should have the same rights as everyone else with respect to marriage, family and parenthood. To this end, a child should not be separated from his or her parents on the grounds of leprosy (principle I.3.c). By the same token, Guideline nº 4 affirms that States should, where possible, support the reunification of families separated in the past as a result of policies and practices relating to persons diagnosed with leprosy, in close connection with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law that put forward the following measures: (a) adoption of appropriate legislative and administrative and other appropriate measures to prevent violations; (b) effective, prompt, thorough and impartial investigation of violations and adoption of measures against those responsible; (c) ensuring victims have equal and effective access to justice and effective remedies.

Hence, the Draft set of principles and guidelines aims to provide guidance to States on the promotion, protection and the guarantee of the full realization of all human rights and fundamental freedoms for all persons affected by leprosy and their family members without discrimination on the grounds of leprosy, including those enshrined in the core international human rights instruments.