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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 68/2017 concerning Zaheer Seepersad (Trinidad and Tobago)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30 of 30 September 2016.
2. In accordance with its methods of work (A/HRC/36/38), on 6 September 2017 the Working Group transmitted to the Government of Trinidad and Tobago a communication concerning Zaheer Seepersad. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Zaheer Seepersad is a national of Trinidad and Tobago, born in 1987, who usually resides in Chaguanas, Trinidad. According to the source, Mr. Seepersad has dystonia, a neurological movement disorder.

5. Mr. Seepersad was allegedly deprived of his liberty on 8 January 2015, when employees of a private ambulance company took him from his grandfather's house in Arima, Trinidad, to St. Ann's Psychiatric Hospital. There, a medical officer from the admissions and assessment centre approved his internment under section 7 of the Mental Health Act of 1975.

6. The source submits that no order from a public authority requesting the apprehension of Mr. Seepersad was shown at the time of his deprivation of liberty. It is reported that allegations had been made by Mr. Seepersad's father that Mr. Seepersad was mentally ill and in need of care and treatment at the hospital.

7. In that context, it is reported that Mr. Seepersad's father submitted a medical certificate issued by a doctor recommending his son be admitted to the hospital. However, the source argues that the certificate was not legally valid because the issuing doctor had in fact never seen or medically examined Mr. Seepersad. Nonetheless, the certificate was accepted as the basis for his admission to the hospital. The issuance of the certificate was supposedly done in order to frame the measure of internment as complying with section 7 of the Mental Health Act.

8. According to the information received, Mr. Seepersad was released after two months of internment at the hospital.

9. In addition, the source reports that, on 4 May 2016, Mr. Seepersad was again taken from the house where he lived with his parents and deprived of his liberty. As on the previous occasion, employees of the private ambulance company took him from the house and drove him to the same hospital. Again, an officer from the admissions and assessment centre ordered that he be interned under section 7 of the Mental Health Act. However, no medical certificate confirming the need for the internment was issued or presented. Instead, the source alleges that the same medical certificate that had previously been used for the detention in 2015 was again cited as the basis for the admission of Mr. Seepersad to the hospital. The source claims that this shows Mr. Seepersad is at risk of being detained again in the future, on the basis of the same certificate.

10. According to the information received, Mr. Seepersad was released after 16 days of being deprived of his liberty at the hospital.

11. The source submits that, in order to deprive a person of his or her liberty under section 7 of the Mental Health Act, the assertion that the person is mentally ill must be accompanied by a medical certificate from a doctor, other than the duly authorized medical officer responsible for admitting the person to hospital. The source states that, according to the Medical Board Act, under section 24 (5) (c), it is considered medical misconduct for any practitioner knowingly to give a false medical certificate with respect to the state of health of any given person. Furthermore, according to the source, under the Code of Ethics in the Practice of Medicine of the Medical Board of Trinidad and Tobago, a medical certificate should contain information based on the medical practitioner's own observation.

12. The source reports that Mr. Seepersad is being prevented by his family from pursuing a false imprisonment tort claim and from applying to the High Court of Trinidad and Tobago, under section 14 of the Constitution, in order to seek a remedy for the violations of his constitutional rights. Similarly, he is reportedly being prevented by his family from making a complaint before the Medical Board of Trinidad and Tobago, under article 25 (5) (c) of the Medical Board Act.

Categories of the Working Group

13. The source submits that the deprivation of liberty of Mr. Seepersad was not compliant with the Mental Health Act and, as a consequence, amounted to detention without a legal basis and thus arbitrary under category I.

14. Furthermore, according to the source, Mr. Seepersad is being neglected by his family and, in both instances, he was deprived of his liberty on the basis of his physical impairment. In that regard, the source claims that Mr. Seepersad is being discriminated against on the basis of his disability, thus rendering his detention arbitrary under category V.

15. In addition, the source claims that Mr. Seepersad is being prevented from having access to the State court system in order to protect his rights. As a consequence, the source argues that the international norms related to a fair trial are not being respected, thus rendering the detention of Mr. Seepersad arbitrary under category III.

Response from the Government

16. On 6 September 2017, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 6 November 2017, detailed information about the current situation of Mr. Seepersad and any comments on the source's allegations.

17. The Working Group regrets that it did not receive a response from the Government, and that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

18. At the outset, the Working Group notes that Mr. Seepersad was in fact released following his most recent alleged internment and is currently not in any detention facility. However, it also notes that, in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion, on a case-by-case basis, as to whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group is of the view that the allegations made by the source are extremely serious, revealing paradigmatic issues concerning the deprivation of liberty of a person with a disability, and shall therefore proceed to deliver its opinion.

19. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

20. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

21. The source has submitted that the detention of Mr. Seepersad on 8 January 2015 and his subsequent internment at St. Ann's Psychiatric Hospital for a period of two months and then again on 4 May 2016 for 16 days was arbitrary, falling under categories I, III and V. The Working Group notes that the Government had the opportunity but has failed to present any submissions in relation to those allegations. The Working Group shall examine the categories in turn.

22. The Working Group observes that arbitrary detention can occur not only in criminal justice settings but also in health-care settings, such as psychiatric hospitals and other institutions where individuals may be deprived of their liberty. As the Working Group has

stated in its most recent annual report, the deprivation of personal liberty occurs when a person is being held without his or her free consent.¹

23. The Working Group notes that article 9 of the Covenant requires that any deprivation of liberty occur only when it is prescribed expressly by the national legislation and in accordance with the procedure set out in that national legislation. In the present case, the Working Group observes that section 7 of the Mental Health Act states that, even in cases of medical emergency, an individual can only be admitted to a psychiatric hospital if an application has been made that that person is mentally ill and that his or her admission is in the interest of the person's health and/or the safety and protection of others. Furthermore, any such admission must be accompanied by a certificate from a medical practitioner other than the duly authorized medical officer responsible for the admission of the person (see sect. 7 (2) (a) and (b)). Moreover, no individual shall be admitted to a hospital as an emergency patient if more than three days have elapsed since the date of issuance of said medical certificate (see sect. 7 (3)).

24. Without making any assessment on the compatibility of the above provisions of that national law with the international human rights obligations undertaken by Trinidad and Tobago, it appears obvious to the Working Group that those provisions were not followed during either internment of Mr. Seepersad at St. Ann's Psychiatric Hospital. First, according to the information submitted to the Working Group, which the Government of Trinidad and Tobago has chosen not to challenge, Mr. Seepersad does not suffer from any mental illness. The Working Group is therefore alarmed that the Mental Health Act of Trinidad and Tobago and its provisions concerning involuntary emergency admittance to a psychiatric institution were applied to Mr. Seepersad at all.

25. Moreover, the medical certificate that was used to allegedly legitimize the first internment of Mr. Seepersad was not issued by a doctor who had in fact examined him. Furthermore, the same certificate was used for the legitimization of his second internment, which took place 16 months later in obvious disregard of section 7 (3) of the Mental Health Act, which requires that such certificates be no more than three days old. The Working Group notes that the Government had the opportunity but has failed to present any submissions also in that regard. The Working Group therefore concludes that the authorities of Trinidad and Tobago failed to respect their own national legal provisions in relation to the two instances of detention of Mr. Seepersad and thus also breached article 9 of the Covenant, which specifically requires that any detention must be carried out in accordance with the law.

26. The Working Group wishes to further underline that any instance of deprivation of liberty, including internment in psychiatric hospitals, must meet the standards set out in article 9 of the Covenant. The Working Group, in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, has stated that, where a person with a disability is deprived of his or her liberty through any process, that person is, on an equal basis with others, entitled to guarantees in accordance with international human rights law, necessarily including the right to liberty and security of person, reasonable accommodation and humane treatment in accordance with the objectives and principles of the highest standards of international law pertaining to the rights of persons with disabilities. A mechanism complete with due process of law guarantees shall be established to review cases of placement in any situation of deprivation of liberty without specific, free and informed consent. Such reviews are to include the possibility of appeal.²

27. The Working Group observes that all such due process guarantees were absent in relation to both internments of Mr. Seepersad, in a further breach of article 9 of the Covenant.

28. The source has also argued that Mr. Seepersad has been prevented by his family from gaining access to the court system in order to bring claims for the infringement of his

¹ See A/HRC/36/37, para. 51. See also A/HRC/30/37, para. 9.

² See A/HRC/30/37, paras. 104–105.

rights, an allegation that the Government has chosen not to challenge. The Working Group recalls that according to the Basic 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.³ That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁴ as well as to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.⁵ Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.⁶

29. The Working Group notes that those provisions were plainly ignored in the case of Mr. Seepersad as he was not only unable to challenge the legality of his detention while he was in the hospital, but also upon his release from there on both occasions.

30. The Working Group therefore concludes that the detention of Mr. Seepersad on 8 January 2015 and his subsequent internment in St. Ann's Psychiatric Hospital for a period of two months and then again on 4 May 2016 for 16 days were arbitrary and fall under category I, as they lacked legal basis, were not carried out in accordance with the procedure established by national law and did not provide for the requisite due process guarantees, and as Mr. Seepersad was not able to challenge the legality of his detention.

31. The source has also submitted that the present case falls under category V, as the detention of Mr. Seepersad and his subsequent internment in the hospital were discriminatory, being on the basis of his physical impairment. The Working Group notes the absence of any reply from the Government in relation to that allegation.

32. The Working Group also notes that Trinidad and Tobago has been a party to the Convention on the Rights of Persons with Disabilities since 25 June 2015. The Working Group reiterates⁷ that it is contrary to the provisions of that Convention to deprive a person of his or her liberty on the basis of disability (art. 14).⁸ Moreover, as the Working Group stated in the Basic Principles and Guidelines, the involuntary committal or internment of persons on the grounds of the existence of an impairment or perceived impairment is prohibited.⁹

33. It is however clear to the Working Group that the deprivation of liberty of Mr. Seepersad was made purely on the basis of his physical impairment, and was therefore discriminatory. The Working Group therefore concludes that the detention of Mr. Seepersad and his subsequent internment in St. Ann's Psychiatric Hospital on two occasions were discriminatory and fall under category V.

34. The Working Group would like to express its most serious concern at the reports it has received about the persistent harassment, intimidation and threats to which Mr. Seepersad has been subjected for bringing his claims to the attention of the Working Group. The Working Group reminds the Government of Trinidad and Tobago that States have a duty to protect individuals and groups and to exercise due diligence in doing so. Intimidation or reprisals may be the result of acts or omission by both State and non-State actors. However, acts or omissions are attributable to the State when they are carried out

³ Ibid, paras. 2 and 3.

⁴ Ibid, para. 11.

⁵ Ibid, para. 47 (a).

⁶ Ibid, para. 47 (b).

⁷ See A/HRC/36/37, para. 55.

⁸ See also Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 19.

⁹ See A/HRC/30/37, at para. 103.

with the consent or acquiescence of an official or other person acting in an official capacity against any individuals or groups who are seeking to cooperate, who are cooperating or who have cooperated with the United Nations.¹⁰

35. The Working Group requests the Government to ensure that all acts of intimidation against Mr. Seepersad cease and that an impartial and effective investigation is carried out in relation to such acts and those responsible brought to justice. The Working Group refers the present case for further action to the focal point on reprisals of the Coordination Committee of Special Procedures and to the Assistant Secretary-General for Human Rights, to lead the efforts of the United Nations to put an end to intimidation and reprisals against those cooperating with it on human rights-related matters.

36. The Working Group also refers the present case for further consideration to 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.

Disposition

37. Although Mr. Seepersad has been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary, notwithstanding the release. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Zaheer Seepersad, being in contravention of articles 2, 3, 6, 7, 8 and 9 of the Universal Declaration of Human Rights and of articles 2, 9 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and V.

38. Consequent upon the opinion rendered, the Working Group requests the Government of Trinidad and Tobago to take the steps necessary to remedy the situation of Mr. Seepersad without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

39. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Seepersad an enforceable right to compensation and other reparations, in accordance with international law.

40. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to 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.

41. The Working Group also refers the present case to the focal point on reprisals of the Coordination Committee of Special Procedures and to the Assistant Secretary-General for Human Rights to lead the efforts of the United Nations to put an end to intimidation and reprisals against those cooperating with it on human rights-related matters.

Follow-up procedure

42. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Mr. Seepersad;

(b) Whether an investigation has been conducted into the violation of Mr. Seepersad's rights and, if so, the outcome of the investigation;

¹⁰ See A/HRC/33/19, para. 2.

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Trinidad and Tobago with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

43. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

44. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

45. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹¹

[Adopted on 20 November 2017]

¹¹ See Human Rights Council resolution 33/30, paras. 3 and 7.