

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 28/2017**

Precautionary measure N°440-16
Zaheer Seepersad regarding Trinidad and Tobago
August 4, 2017

I. INTRODUCTION

1. On June 3, 2016, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures submitted in favor of Mr. Zaheer Seepersad (hereinafter “the proposed beneficiary”), urging the IACHR to request the State of Trinidad and Tobago (hereinafter “Trinidad and Tobago” or “the State”) to adopt the necessary measures to safeguard his life and personal integrity due to the situation of risk which he would face due to his medical condition and the existing threat of being admitted to the “St. Ann Psychiatric Asylum,” which could aggravate his medical condition .

2. The applicant submitted additional information on June 7, 8, 13, 15, 17, 19 and 20, 2016. On August 18, 2016, the IACHR requested information from the State of Trinidad and Tobago regarding the alleged situation of risk. On September 16, 2016, the State requested a 30-day extension. On October 3, 2016, the Commission granted an extension for 15 days. Afterwards, the applicant submitted additional information on August 20, 21, 22, 23, 25, 29 and 31; on September 2, 6, 12, 13, 16, 19, 21, 23, 25, 28, 29 and 30; and October 2, 4, 7, 8, 13, 18, 24 and 27, 2016. During 2017, the applicant submitted additional information on January 9 and 27; March 16 and 28; April 11 and 24; and May 23. On June 8, 2017, the IACHR reiterated its request for information to the State. The applicant submitted additional information on June 13, 15 and 19; and on July 7 and 15, 2017. To the date of the present resolution, the State has not sent its response to the IACHR’s requests for information.

3. Having analyzed the allegations of fact and law, the Commission considers that the submitted information demonstrates *prima facie* that the rights to life and personal integrity of the proposed beneficiary are subject to a serious and urgent risk of irreparable damage. Consequently, the Commission requests the State of Trinidad and Tobago to: a) adopt the necessary measures to protect the life and personal integrity of the proposed beneficiary, taking into consideration the characteristics of his medical condition and his condition as a person with disability. In particular, by means of the adoption of immediate measures which would allow him to receive adequate medical treatment in accordance with the applicable international standards, including specialized medical care which provides the necessary diagnosis and medications, as well as required therapies, in conditions of affordability and accessibility; b) consult the measures to be adopted with the proposed beneficiary to ensure his agreement; and c) inform on the actions adopted to investigate the alleged lack of access to medical care which gave rise to the adoption of the present precautionary measure, so as to avoid its repetition.

II. SUMMARY OF FACTS AND LEGAL ARGUMENTS SUBMITTED DURING THE PROCEEDING

1. Information submitted by the applicant

4. The applicant introduces himself as an adult with disability who suffers from “dystonia” (“a neurological condition that causes abnormal postures”)¹. The applicant allegedly lives with his parents, who allegedly do not take adequate care of his medical condition.

5. The applicant indicated that the type of “dystonia” from which he suffers requires drugs such as “botulinum toxin” and a surgery such as deep brain stimulation and peripheral denervation. According to the applicant, he is currently in need of this surgery, however, this surgery is not available locally and he is unable to travel abroad to have it done.

6. The applicant submitted various medical certificates regarding his medical situation and his condition of disability:

- According to a medical certificate from 2011, the proposed beneficiary has a history of “chronic muscle weakness” identified when he was 15 years old, which had initially led to a diagnosis of “motor neuron disease.” However, further exams determined that he had a “possible diagnosis of muscular dystrophy.” In 2007, he was at the “Mayo Clinic” (United States), however, he was unable to complete the schedule for the evaluations which would determine the required medical treatment. According to the certificate submitted by the applicant: “nothing further can be done locally... as his condition has continued to deteriorate.”
- According to another medical certificate from 2012, a doctor from Trinidad and Tobago certified that the proposed beneficiary suffers from recurrent urinary problems. It was indicated that he suffers “continuous involuntary muscle movements in the abdomen made worse by the slightest form of physical activity or force that causes pains in the spine and ribs.” Moreover, it was indicated that he had gastric and rheumatic problems and that he would be “unable to perform daily living activities without assistance.”
- In another medical certificate from 2013, a doctor “has been seeing Mr. Z Seepersad at home,” he reportedly has “a history of recurrent UTIs [Urinary Tract Infection] (...) this has been ongoing for the past 2 or 3 years and has been treated with appropriate intravenous antibiotics such as oral medications that have very little effect on him.” In addition, “his muscular weakness and inability to take care of his personal needs continue to deteriorate.” According to the submitted certificate, his symptoms include: generalized proximal muscle weakness, dysphagia, dyspepsia, occasional gastrointestinal disturbance, variable coldness of extremities with inability to perspire, predominant fasciculation of abdominal muscles, continuous back and axial muscle pains. Moreover, in regard to his condition of disability, it is indicated that the proposed beneficiary is “at the present time, restricted to bed with limited movements in his bed.”

7. The applicant indicates that in 2016 he was admitted to “St. Ann Psychiatric Asylum,” where he stayed between May 4 and 20, 2016. According to the applicant, this was reportedly not the first time that he was arbitrarily deprived of his liberty. In the hospital, the applicant indicated that he did not receive the treatment which he requires for his “dystonia,” and he had been beaten by other patients, without the authorities doing anything to protect his rights. In the various communications, the applicant referred to the treatment received as “torture.” According to the applicant, “if he goes back to the Center, he is not sure that the surgery would be able to help him because his muscles have

¹ According to the National Institute of Neurological Disorders and Stroke of the United States of America, “The dystonias are movement disorders in which sustained muscle contractions cause twisting and repetitive movements or abnormal postures. The movements, which are involuntary and sometimes painful, may affect a single muscle, a group of muscles such as those in the arms, legs, or neck; or the entire body. Diminished intelligence or emotional instability are generally not characteristics of the dystonias.” (Source: <https://www.ninds.nih.gov/Disorders/All-Disorders/Dystonias-Information-Page#disorders-r1>)

hardened.” The applicant indicated that there allegedly exists a threat of him being again arbitrarily deprived of his liberty against his will in the aforementioned hospital.

8. In general terms, the applicant considers that in Trinidad and Tobago there is no way to protect the rights of adults with disabilities and there are no effective remedies. Furthermore, the applicant indicated that he is reportedly mistreated by his parents, who called him a “hypochondriac” person; his medical condition is supposedly deteriorating and he has pain and problems when urinating, which could damage his liver. The applicant indicates that he is not receiving adequate medical treatment; that his medical condition is deteriorating as time passes by; and the “dystonia,” from which he suffers, is “affecting his muscles even more.”

2. Information submitted by the State

9. To the date of the present Resolution, the State of Trinidad and Tobago has not submitted its response to the Commission.

III. ANALYSIS ON THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

10. The mechanism of precautionary measures is part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States, and in case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 (b) of the Statute of the IACHR. The mechanism of precautionary measures is described in Article 25 of the Commission’s Rules of Procedure. According to this Article, the Commission grants precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

11. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or the “IHR Court”) have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations.

12. For the purpose of making a decision in accordance with Article 25(2) of its Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

13. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.

14. In regard to the requirement of seriousness, the Commission considers that it is met in light of the fact that Mr. Seepersad suffers from “dystonia,” an incurable disease of a progressive nature, and for which he is supposedly not receiving the medical treatment required to control the symptoms. This situation had allegedly greatly deteriorated his health, which has led to him not being able to move on his own and being bedridden. Moreover, according to the submitted information, Mr. Seepersad allegedly has a series of symptoms which include muscular pain, and suffers from recurrent urinary tract infections.

15. In regard to the “dystonia,” the Commission has taken into consideration that this condition is considered a rare disease,² and according to the National Institute of Neurological Disorders and Stroke of the United States, dystonias are “movement disorders in which sustained muscle contractions cause twisting and repetitive movements or abnormal postures.” These movements, “which are involuntary and sometimes painful, may affect a single muscle; a group of muscles such as those in the arms, legs, or neck; or the entire body.” According to public information of the “Mayo Clinic,” which at some point treated the proposed beneficiary, “dystonia” reportedly does not have a cure, but medications could improve the symptoms.³ Moreover, according to the same Clinic, the surgery mentioned by the applicant is sometimes used to disable or regulate nerves or certain brain regions in persons with severe “dystonia.”⁴

16. According to the information submitted by the applicant, he is not receiving any kind of medical treatment for the progressive deterioration of his state of health. The Commission has observed that the submitted medical certificates indicate that in fact a series of additional evaluations are required to determine the specific treatment which the applicant should receive.

17. The Commission identifies that, according to the medical certificates, as a result of this disease: Mr. Seepersad has become severely disabled, unable to move independently and is bedridden. According to what the applicant states, this situation has generated a complete dependency on his parents to conduct his daily life activities due to his muscular weakness and his inability to take care of his personal needs. The applicant indicates that his parents in fact do not take adequate care of his state of health, they reportedly call him a “hypochondriac” person and allegedly threaten him with admitting him again to the “St. Ann Psychiatric Asylum,” the psychiatric institution where he had been previously admitted and where he had allegedly suffered aggression at the hands of patients and mistreatment by the medical staff; he qualifies these aggressions suffered as “tortures.”

18. The Commission observes that in light of the previous allegations the State has not responded to the requests for information issued or reiterations made by the IACHR, for the purpose of obtaining its observations on the present matter. In that sense, while the lack of response of the State is not in itself reason enough to grant precautionary measures, it is an element to consider when making a decision. The lack of information from the State makes it difficult for the Commission to have more elements for the assessment of the circumstances in which Mr. Seepersad finds himself, and to be informed on the

² NORD. National Organization for Rare Disorders. Available at: <https://rarediseases.org/rare-diseases/dystonia/>

³ MAYO CLINIC. Dystonia. Overview. Available at: <http://www.mayoclinic.org/diseases-conditions/dystonia/home/ovc-20163692>

⁴ Ibidem

measures which could be implemented in his favor and, in general, on the position of the State regarding the present request.

19. In light of the foregoing, based on the comprehensiveness of the available information on the situation of Mr. Seepersad, including his consistent account, as well as the submitted medical certificates, and due to the lack of response from the State, the Commission considers that *prima facie* the rights to life and to personal integrity of the proposed beneficiary are subject to a situation of risk.

20. Regarding the element of urgency, the Commission takes note that, according to the applicant, his disease has progressively deteriorated his health, making him suffer from urinary infections and pain. Moreover, his suffering worsens his condition of physical disability, being currently unable to move and bedridden. In regard to these allegations, the Commission does not have information to the contrary, due to the lack of a State response. In light of the foregoing, the Commission considers that in order to prevent other negative effects to the health of Mr. Seepersad which could further deteriorate his condition and pose a risk to his life and integrity, it is necessary to adopt immediate measures which would allow him to receive adequate medical treatment, including specialized medical care which provides the necessary diagnosis and medications, and required therapies.

21. The Commission considers it relevant to recall that persons with disabilities have the right to receive the treatment they require to address their disability, as well as to receive the services aimed at reducing the emergence of additional consequences or disabilities. Moreover, the Commission recalls the obligation of the States to provide access to support for decisions regarding the medical treatment of persons with disabilities, which allows the persons affected to be directly involved in the decision making process. Furthermore, the Commission recalls that in accordance with the UN Convention on the Rights of Persons with Disabilities, to which Trinidad and Tobago is a signatory State⁵, the existence of a disability shall in no case justify a deprivation of liberty.⁶ Moreover, this Convention recognizes that persons with disabilities have the right to exercise their legal capacity on an equal basis with others and the right to live independently and to be included in the community.⁷

22. Regarding the requirement of irreparability, the Commission deems it met, to the extent that the possible violation of the right to life and personal integrity constitutes the ultimate situation of irreparability.

IV. BENEFICIARY

23. The request has been submitted in favor of Mr. Zaheer Seepersad, who is duly identified in the terms of Article 25(6) b of the Rules of Procedure of the IACHR.

V. DECISION

24. The Inter-American Commission on Human Rights considers that the present matter presents *prima facie* the requirements of seriousness, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests the State of Trinidad and Tobago to:

- a) adopt the necessary measures to protect the life and personal integrity of the proposed beneficiary, taking into consideration the characteristics of his medical condition and his condition as a person with disability. In particular, by means of the adoption of immediate

⁵ Trinidad and Tobago signed the aforementioned Convention on September 27, 2007 and ratified it on June 25, 2015.

⁶ Article 14 of the Convention on the Rights of Persons with Disabilities.

⁷ Article 12 and 19 of the Convention on the Rights of Persons with Disabilities.

- measures which would allow him to receive adequate medical treatment in accordance with the applicable international standards, including specialized medical care which provides the necessary diagnosis and medications, and required therapies, in conditions of affordability and accessibility;
- b) consult the measures to be adopted with the proposed beneficiary to ensure his agreement; and
 - c) inform on the actions adopted to investigate the alleged lack of access to medical care which gave rise to the adoption of the present precautionary measure, so as to avoid its repetition.

25. The Commission also requests the Government to inform the Commission in 20 days from the date of the present communication, on the adoption of the agreed precautionary measures and to periodically update this information.

26. The Commission highlights that, in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudgment of any violation of the rights protected in the American Declaration and other applicable instruments.

27. The Commission requests that the Executive Secretariat of the IACHR notify the State of Trinidad and Tobago and the applicant of the present resolution.

28. Approved on August 4th, 2017, by: Francisco José Eguiguren Praeli, President; Margarete May Macaulay, First Vice President; Esmeralda Arosemena de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Luis Ernesto Vargas Silva, members of the IACHR.

Mario López-Garelli
By authorization of the Executive Secretary