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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL Health (2002-7) G/SO 214 (53-24)
RUS 11/2013

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/6 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the situation of Mr. [REDACTED], born in 1980, citizen of the Russian Federation, residing in [REDACTED] city, [REDACTED], Russian Federation. Mr. [REDACTED] is a drug-dependent person, living with HIV, has tuberculosis and Hepatitis C.

According to the information received:

On 12 April 2012, at approximately 14:00, Mr. [REDACTED] was reportedly arrested by two law enforcement officers, namely Mr. [REDACTED] and his assistant, Mr. [REDACTED], for alleged possession of drug. He was subsequently transferred to the district department N 24 in Tolyatti. It is alleged that no record of the arrest and transfer of Mr. [REDACTED] to police custody was made at the time of apprehension. It is also alleged that Mr. [REDACTED] informed the law enforcement officers that he had injected a narcotic substance (a homemade opioid) prior to apprehension; the subsequent medical examination had reportedly documented that the state of intoxication was caused by a narcotic substance. A syringe with the drug was allegedly planted on him by police officers after the arrest.

It is further alleged that while in custody first at police department N3 in Tolyatti, Mr. [REDACTED] was beaten on his head, arms and legs while lying on the floor handcuffed. While he was being beaten, the arresting officers had allegedly asked Mr. [REDACTED] to confess to drug possession. A medical examination allegedly carried out upon Mr. [REDACTED] release from the district police department

corroborated the allegations of beating. It is further reported that at around 21:00 , Mr. ██████ was taken to district police department N24 in Tolyatti and placed in a cell measuring 2x3 meters with no ventilation or natural light and no place to sleep except for a bench occupied by three other inmates. It is reported that the light was constantly lit and the cell had no toilet and no area for washing. It is alleged that the prison officers had repeatedly denied Mr. ██████ requests to contact his relatives in order to obtain the antiretroviral medication needed for the treatment of his HIV condition. It is reported that approximately 10 hours after the arrest, and by using another detainee's phone, he was finally able to contact a family member in order to obtain antiretroviral medication. It is further reported that while in detention, Mr. ██████ suffered opiate withdrawal syndrome and needed to use the toilet frequently but was often denied access and was advised to tolerate it.

Mr. ██████ was released at 12:30 a.m. on 14 April, 34 hours after his arrest. He was subsequently reportedly charged for "storage of narcotic substances without intent to supply" and sentenced to one year imprisonment. It is further reported that Mr. ██████ request to initiate criminal proceedings against the actions of the arresting officers was refused by the Prosecutor of the Central District of Tolyatti. Two subsequent complaints, filed with the Prosecutor of the city of Tolyatti and the Investigating Department, were reportedly subsequently refused. The appeal of the verdict filed with Samara Regional Court was reportedly dismissed. Mr. ██████ had reportedly filed a complaint to the district court on the actions of the Prosecutor of Tolyatti, citing the incomplete investigation. It is reported that the Central District Court rejected his complaint. The decision was appealed and dismissed at a later stage. It is reported that he was later acquitted on alleged procedural grounds.

According to the sources, Mr. ██████ underwent drug-dependency treatment numerous times since 1994, and he reportedly suffered from abstinence syndrome on all occasions and relapsed within a short period of discharge from the facilities. Mr. ██████ was diagnosed with Hepatitis C in 1994 and with HIV in 1998, allegedly caused by sharing contaminated syringes due to the lack of needle and syringe programs in Tolyatti at that time. On 11 April 2012, due to the deterioration of his health Mr. ██████ reportedly appealed to the Ministry of Health of Samara oblast requesting opioid substitution therapy, currently unavailable in the Russian Federation, for the drug dependency. It is alleged that his arrest on 12 April 2012 may be related to Mr. ██████ unsuccessful appeal for the substitution treatment.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. ██████. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the

International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

With respect to the allegations according to which Mr. ██████ was beaten while in police custody, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In this context and with respect to the allegations according to which Mr. ██████ was beaten in order to confess, we would like to draw your Excellency's Government's attention to article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in Article 7 of the International Covenant on Civil and Political Rights.

With respect to the allegations according to which on numerous occasions Mr. ██████ complaints on the lack of investigation into his allegations of mistreatment were refused or dismissed, we would like to draw your Excellency's Government's attention to article 12 of the Convention against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture."

With regard to the right of Mr. ██████ to the highest attainable standard of health, we would like to recall that this right is reflected, *inter alia*, in article 12 of the

International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your country on 16 October 1973, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes a requirement by States to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, States Parties undertake to guarantee that the rights enunciated in the Covenant “will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2(2)).

We would also like to refer your Excellency’s Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that States are under an obligation to respect, protect, and fulfill the right to health (para.33). Respecting the right to health obliges States to refrain from denying or limiting equal access for all person and abstaining from imposing discriminatory practices, especially against vulnerable groups such as people living with HIV, Hepatitis C, or those who are dependent on drugs (para.34). To protect the right to health, States should make sure that third parties, including healthcare professionals within its territory, do not interfere with person’s right to health. And States fulfill the right to health by taking all necessary legislative, administrative, and other relevant steps to enable individuals and communities to enjoy the right to health in practice. Fulfilling the right to health requires States to adopt national policies directed at ensuring the right to health of all people, especially vulnerable groups.

The enjoyment of the right to health includes, inter alia, access to health facilities, goods and services that are scientifically and medically appropriate and of good quality (para.12 (d)). Opioid substitution therapy (OST) is considered to be an effective, evidence-based form of treatment for drug dependence, involving prescription of substitute medications for opioid dependence. OST has been found to decrease the prevalence of injecting drug use and sharing of injecting equipment, thus reducing the risk of contracting HIV, Hepatitis C, and other blood-borne viruses (see report of the Special Rapporteur on the right to health, A/65/255, para.52). The State is, therefore, under an obligation to make OST available for drug-dependent individuals. Punitive drug control methods, such as incarceration, increase the harms associated with drug use, while neglecting evidence-based approaches (A/65/255, para.15). Classifying OST as illegal creates an extra barrier to accessing treatments for drug dependency (para.36). A denial of access to OST also indirectly promotes continuance of risky behaviour and has the potential to undermine the effectiveness of health interventions and programmes, such as those designed to prevent HIV/AIDS and Hepatitis transmission amongst drugs users.

Moreover, the right to health casts a non-derogable core obligation on States to make essential medicines available and accessible, including those medicines as defined by the World Health Organization Action Programme on Essential Drugs (General Comment No. 14, para.43(d)). Methadone and buprenorphine are listed by the World Health Organization as essential medicines to be used in substance dependence programmes.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Please confirm whether an investigation has been opened, and if so, 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.
3. Please provide information on the measures undertaken to ensure that any statements or confessions obtained under torture are excluded from judicial proceedings.
4. What measures has your Excellency's Government taken to ensure that all harm-reduction measures and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations.
5. What measure, such as training programmes are envisaged to sensitize the personnel in places of deprivation of liberty, in order to meet the special needs of persons who use drugs.
6. What measures have been taken to ensure the enjoyment of the right to the highest attainable standard of health by Mr. [REDACTED] and other drug users and drug-dependent persons in the Russian Federation?

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Anand Grover

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

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment