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SPECIAL PROCEDURES OF THE
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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)
NLD 2/2013

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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 15/22 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the circumstances of the case of Ms. **Johanna Christina Santegoeds**, who, between October 1994 and May 1997, was transferred to various wards for adult and youth psychiatry located in Herlaarhof, Zilverlinden-5-Zuid and GGzE Eindhoven within the Netherlands.

According to the information received:

On 23 September 1994, following a suicide attempt Ms. Santegoeds, 35, founder and chair of Stichting Mind Rights, an organization working against coercion in mental health care institutions, and a board member of the World Network of Users and Survivors of Psychiatry (WNUSP), was admitted to Coudewater Rosmalen psychiatric hospital in the Netherlands. Between October 1994 and May 1997, she was transferred to various wards for adult and youth psychiatry located in Herlaarhof, Zilverlinden-5-Zuid and GGzE Eindhoven within the Netherlands.

According to the information received, during her involuntary stay in these institutions, Ms. Santegoeds was subjected to forced psychiatric interventions, including seclusion for various periods of time, forced medication without informed consent, and frequent forced body cavity searches often performed by men. Ms. Santegoeds had reportedly sustained many physical and psychological scars. It is reported that she had made several attempts to run away and to commit suicide and was since then perceived as dangerous. On several occasions either as

a result of self-harming or by accident, Ms. Santegoeds was seriously injured but the accompanying psychiatric staff had reportedly failed to believe that she sustained serious injuries and did not provide her with medical treatment. Instead she was allegedly directed to a psychotherapist.

On 1 July 1996, Ms. Santegoeds was transferred to psychiatric hospital GGzE in Eindhoven which she was subsequently released in 1997. Previously, while on the run from the psychiatric institution, Ms. Santegoeds reportedly filed several complaints with the police with no results. When she was in the forementioned institutions, reportedly Ms. Santegoeds had restricted access to the outside world. The special hotline available to patients was blocked shortly after the staff realised that she used it to complain about the treatment within the institution.

In this context and without in any way implying any conclusion as to the facts of the case, 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), ratified by your Excellency's Government on 11 December 1978, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Excellency's Government on 21 December 1988.

With regard to the alleged forced psychiatric treatment and confinement of Ms. Santegoeds, and without in any way implying any conclusion as to whether Ms. Santegoeds suffers from a mental disability or not, we wish to recall that during the consideration of the periodic report of the Netherlands before the Committee Against Torture, the Committee expressed concern at the high numbers of persons with mental and psychosocial disabilities who are held in mental health care institutions on involuntary basis, often for a lengthy period of time and at the frequent use of solitary confinement, restraints and forced medication which may amount to inhumane and degrading treatment. The Committee remained concerned at the lack of focus on alternatives to hospitalization of persons with mental and psychosocial disabilities and about the frequent lack of effective and impartial investigation of the excessive use of restrictive measures in mental health care institutions (arts. 2, 11, 13 and 16). (CAT/C/NLD/CO/5-6, para. 21).

In this context, we would also like to draw the attention of your Excellency's Government to the report for the Special Rapporteur on Torture to the Human Rights Council in March 2013 (A/HRC/22/53). In paragraph 58 it states that in 2008 the mandate made significant strides in the development of norms to consider forced psychiatric interventions on the basis of disability alone as a form of torture or ill-treatment (see A/63/175). The mandate has previously declared that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint may constitute torture or ill-treatment (A/63/175, paras. 55-56). [...] Moreover, any restraint on people with mental disabilities for even a short period of time may constitute

torture or ill-treatment (See CAT/C/CAN/CO/6, para. 19 (d); ECHR, *Bures v. Czech Republic*, Application No. 37679/08 (2012), para. 132). It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions (paragraph 63), with the sole possible exception of temporary measures to prevent harm to the patient or others, and strictly limited to the exigencies of the circumstances.

Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 64 of the 2013 report, which states that the mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture or ill-treatment (A/63/175, paras. 44, 47, 61, 63; Human Rights Committee, communication No. 110/1981, *Viana Acosta v. Uruguay*, paras. 2.7, 14, 15.) and that, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41).

We would like to reiterate that we believe that except in emergency cases, the individual concerned should not be deprived of his or her liberty unless he has been reliably shown to require psychiatric treatment. As detention in a psychiatric context may lead to non-consensual psychiatric treatment, deprivation of liberty that is based solely on the grounds of a disability and that inflicts severe pain or suffering falls under the scope of the Convention against Torture (A/HRC/22/53, para. 69).

In the above mentioned report (A/HRC/22/53), we have called on States to safeguard free and informed consent on an equal basis for all individuals without any exception, through an appropriate legal framework and judicial and administrative mechanisms. Any legal provisions to the contrary, such as provisions allowing confinement or compulsory treatment in mental health settings, including through guardianship and other substituted decision-making, must be revised (A/64/272, para. 93). Likewise, the instances of treatment without informed consent should be investigated; redress to victims of such treatment should be provided (A/HRC/22/53, para. 85. b-e).

With regard to the right of Ms. Santegoeds to the highest attainable standard of mental 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 (ratified by the Netherlands on 11 December 1978), which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes the right to be free from non-consensual medical treatment and experimentation. Consent to medical treatment is closely connected with the freedom to control one's health and body, a vital element of the right to health. As stated by the Special Rapporteur on the right to health in his 2009 report to the General Assembly, policies and legislation sanctioning non-consensual treatments lacking therapeutic purpose or aimed at correcting or alleviating a disability, including unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment

(para.73, A/64/272). Safeguarding an individual's ability to exercise informed consent in health, and protecting individuals against abuses is fundamental to protecting the rights conferred under the International Covenant on Economic, Social and Cultural Rights, including the right to health (para.19, A/64/272).

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 provides that States are under the obligation to respect the right to health by, inter alia, refraining from interfering directly or indirectly with the enjoyment of the right to health and from enforcing discriminatory practices as a State policy (para.34). The obligation to protect means that States should take actions to ensure that third parties do not harm the right to health of persons with mental disabilities, including by taking measures to protect them from violence and other right to health-related abuses occurring in private health care or support services (para.35). States also have the obligation to enact judicial or other appropriate remedies to allow victims of right to health violations to seek adequate reparation whether through compensation or otherwise (para.59).

We also wish to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the right to health concerning mental disability and the right to health (E/CN.4/2005/51), in which he stresses that the right to community integration has general application to all persons with mental disabilities. He notes that decisions to isolate or segregate persons with mental disabilities, including through unnecessary institutionalization, are inherently discriminatory and contrary to the right of community integration enshrined in international standards, and that segregation and isolation in itself can also entrench stigma surrounding mental disability (para.54). On the other hand, community integration better supports the dignity, autonomy, equality and participation of persons with mental disabilities in society and helps prevent institutionalization, which can render them vulnerable to human rights abuses and damage their health on account of the mental burdens of segregation and isolation (para.85). He also observes that community integration is an important strategy to address stigma and discrimination against persons with mental disabilities. The Special Rapporteur on the right to health therefore concludes that the segregation and isolation of persons with mental disabilities from society is inconsistent with the right to health, as well as the derivative right to community integration, unless justified by objective and reasonable considerations, grounded in law and subject to independent scrutiny and determination (para.86).

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 of the case accurate?
2. Has a complaint been lodged?

3. 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. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. What measures have been undertaken by the Government of the Netherlands to revise the legal provisions that allow detention on mental health grounds or in mental health facilities, and any coercive interventions or treatments in the mental health setting without the free and informed consent by the person concerned? What steps have been undertaken to replace forced treatment and commitment by services in the community that meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy of the person concerned, with an emphasis on various alternatives for mental health care, including peer support, awareness-raising and training of mental health-care and law enforcement personnel and others?

5. What steps have been undertaken to develop alternative measures to reduce the number of forcibly interned persons with mental and psychosocial disabilities and ensure that involuntary internments in places of deprivation of liberty, including psychiatric and social care institutions, are done on the basis of a legal decision, guaranteeing all effective legal safeguards in line with the Recommendations issued by the Committee Against Torture (6-31 May 2013)?

6. What measures have been undertaken to impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long-and short-term application?

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 Ms. Johanna Christina Santegoeds 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

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highest attainable standard of physical and mental health

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