



General Assembly

Distr.: General
27 August 2013

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14-23 November 2012

No. 63/2012 (Bangladesh)

Communication addressed to the Government on 26 July 2012

Concerning Hachimuddin Sheikh, Mefroza Khatun and Ariful Sheikh

The Government did not reply to the communication.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Hachimuddin Sheikh, a 48-year-old citizen of India; Mrs. Mafroza Khatun, wife of Mr. Sheikh, a 40-year-old citizen of India; and Master Ariful Sheikh, five-year-old grandson of Mr. Sheikh, usually reside in Gajdharpara village under the jurisdiction of Berhampore Police Station in the Murshidabad district of West Bengal.

5. It is reported that in April 2011, Mr. Hachimuddin Sheikh, Mrs. Mafroza Khatun and their grandson, Ariful Sheikh, were visiting Mr. Sheikh's ailing mother in Bangladesh. On 15 April 2011, they were arrested for not possessing passports with the required visas for entry into Bangladesh. The petitioners were charged under section 4 of the 1952 Control of Entry Act in Daulatpur Police Station, case No. 17/11 dated 15 April 2011. On 12 May 2011, after 27 days of pretrial detention, the police produced the petitioners before a local magistrate. Both Mr. Sheikh and his wife reportedly admitted their guilt before the trial magistrate and were sentenced to pay 500 taka each (approximately equivalent to US\$ 6) and two months in detention. The judge also issued an order for the petitioners' repatriation to India.

6. The source contends that since 12 July 2011 when the sentence imposed had been completed, the petitioners continue to be detained. Their term of detention has not been renewed by a judge and the authorities have failed to inform them about the date of their repatriation and any reasons that could justify their detention. Such treatment, according to the source, constitutes a breach of article 9 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR) as well as the relevant provisions of the Constitution of Bangladesh.

7. The source notes with concern the continued detention of Ariful Sheikh, a five-year-old minor. He has been kept in detention under the same conditions as his grandparents, in alleged violation of a set of provisions contained in the Convention on the Rights of the Child (CRC) and article 24, paragraph 1, of the ICCPR. The source also reports that in the order for repatriation issued by the judge, there was no special provision relating to Ariful Sheikh and his return to his parents in India. In line with article 37 of the CRC, no State party shall deprive minors of their liberty arbitrarily. States are expected to protect the best interests and normal development of the child and not to punish a minor for the status or activities of his/her parents or guardians.

8. On 15 April 2012, the Ministry of Home Affairs of Bangladesh issued an order allowing the repatriation of the petitioners through Darsana Check Post along the Indo-Bangladesh border. Nonetheless, Mr. Sheikh, Mrs. Khatun and their grandson, Ariful Sheikh, remain in detention in Kushtia jail in Bangladesh. Their family in India has filed numerous complaints before the Additional Superintendent of Police of Murshidabad on 30 May 2011; the Chief Minister of West Bengal and the High Commissioner of Bangladesh in India on 9 July 2011; the Governor of West Bengal on 27 October 2011; the District Magistrate of Murshidabad and the Officer-in-Charge under the District Magistrate of Murshidabad on 25 October 2011, with supporting documents for their immediate repatriation and release. These efforts have not yet brought any result.

Response from the Government

9. The Working Group transmitted the above allegations to the Government of Bangladesh on 26 July 2012. The Government acknowledged receipt of the Group's communication. However, it did not send a detailed response regarding the situation of Mr. Sheikh, Mrs. Khatun and their minor grandson, Ariful Sheikh, and the legal provisions justifying their continued detention.

Discussion

10. In the absence of a response from the Government and based on its methods of work, the Working Group is able to render an opinion in the light of the information submitted to it.

11. Mr. Sheikh, his wife Mrs. Khatun and minor grandson, Master Ariful Sheikh (all Indian nationals), were arrested on 15 April 2011 for entering Bangladesh to visit an ailing relative without visas.

12. The act of crossing into Bangladesh from India is an offence under sections 3 and 4 of the 1952 Control of Entry Act of Bangladesh which reads in part as follows: "3. No Indian citizen shall enter any part of Bangladesh unless he is in possession of a passport with a visa authorizing the entry."

13. Whoever contravenes the provision of section 3 shall be punished with imprisonment which may extend to one year, or with a fine which may extend to 1,000 taka, or with both.

14. Section 6 of the same law requires the detained person(s) to be presented as soon as possible before a magistrate who has the authority to fine and sentence to imprisonment as well as order removal from the jurisdiction of Bangladesh.

15. Section 10 of the 1952 Control of Entry Act protects officers implementing this law by stating the following: "10. No prosecution, suit or other legal proceeding shall be commenced against any person in respect of anything done or purporting to be done in exercise of the powers conferred by or under this Act, except with the sanction of the Government."

16. In the case in hand, Mr. Sheikh and his wife, Mafroza Khatun, pleaded guilty to crossing the border from India to Bangladesh without the requisite visas on their Indian passport. On 12 May 2011, that is 27 days in pretrial detention, they were presented before a judge who convicted them to two months detention and to a fine of 500 taka each as well as removal from Bangladesh. The Working Group is informed that the fine imposed was paid there and then. This happened on 12 May 2011.

17. On 12 July 2011, in accordance with the decision of the judge, Mr. Sheikh, Mrs. Khatun and their grandson, Ariful Sheikh, ought to have been removed from Bangladesh and repatriated to India. However, the Working Group is informed that the three are still in detention to date.

18. The Working Group notes a number of violations of Bangladesh and international human rights law in the case in hand. First, there is a violation of section 6 of the 1952 Control of Entry Act which requires that persons violating its section 3 should be presented before a magistrate or police officer as soon as possible; 27 days of pretrial detention before being presented before a judicial authority is a violation of this law. Secondly, section 6 requires that persons so convicted under section 4, be removed from the country (Bangladesh) once they have paid the fine and completed the prison sentence. This is the duty of the law enforcing agencies which they have failed to discharge even after 16 months, leaving the three persons in detention.

19. The Working Group notes with particular concern that a minor, Ariful Sheikh, has been subjected to arrest and detention since 15 April 2011 with his grandparents. This is a

clear violation of a number of substantive articles of the CRC particularly article 37 which requires that State parties should not deprive minors of their liberty and detention ought only to be a matter of last resort.

20. There also appears to be a serious lapse in the implementation of instructions issued by the Ministry of Home Affairs to its law enforcing agencies on 15 April 2012 ordering repatriation of the three detainees to India. Despite this express instruction, seven months later, Mr. Sheikh, Mrs. Khatun and Ariful Sheikh are still in detention.

21. The Working Group brings to the attention of the Government of Bangladesh that one of the factors impacting on implementation of orders under the 1952 Control of Entry Act is section 10 of the Act which offers officers of the State an escape from accountability if they exercised their powers under this Act.¹ Had this not been the case, the law enforcing officers would not have disregarded the court order of the judge issued on 12 May 2011 as well as the order from the Ministry of Home Affairs on 15 April 2012.

22. At the international human rights level, the Working Group finds that article 9 of the UDHR and of the ICCPR have been violated and as mentioned above, the CRC has not been respected.

Disposition

23. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Hachimuddin Sheikh, Mafroza Khatun and Ariful Sheikh (a minor), is arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights; it falls under category I of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Consequent upon the opinion rendered, the Working Group requests the Government of Bangladesh to take the necessary steps to remedy the situation of Hachimuddin Sheikh, Mafroza Khatun and Ariful Sheikh and bring it into conformity with the standards and principles set forth in the UDHR and the ICCPR.

25. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release the above-mentioned individuals and to accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

26. The Working Group recalls the Human Rights Council's request that States take into account the Group's views and, where necessary, take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. States are also invited to extend their cooperation to the Group's requests for information and to give due consideration to the recommendations it has made.²

[Adopted on 21 November 2012]

¹ Section 10: "No prosecution, suit or other legal proceeding shall be commenced against any person in respect of anything done or purporting to be done in exercise of the powers conferred by or under this Act, except with the sanction of the Government."

² Resolution 15/18 on arbitrary detention adopted by the Human Rights Council at its fifteenth session (A/HRC/RES/15/18), paras. 3, 4 (a) and 9.