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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-eighth session (13–22 November 2013)

No. 51/2013 (People's Republic of Bangladesh)

Communication addressed to the Government on 10 September 2013

Concerning Rizvi Hassan

The Government has not replied 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 the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), 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);

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(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. Rizvi Hassan, aged 26, is a national of Bangladesh. He is married with two children and resides in Fatikchhari, Chittagong, where he works as a businessman.

4. On 26 March 2013, Mr. Hassan was reportedly arrested by the police without a warrant and detained for 10 days at the Hat Hazari police station. The source alleges that during the entire period that Mr. Hassan was in custody, the police inflicted various forms of torture on him, including electric shock; injecting substances into his body to numb his senses and render him unconscious; hitting the joints of his hands and legs with blunt weapons, thereby causing severe injuries to the tips of his fingers; pouring hot, spicy water into his nose and mouth; and keeping him fastened with a rope. He was also deprived of food. Furthermore, the police allegedly forced him to sign documents without his being made aware of their contents.

5. The source maintains that such cruel, inhuman or degrading treatment or punishment is expressly prohibited by article 35 (5) of the Bangladeshi Constitution and the international human rights instruments to which the State is a party, including the International Covenant on Civil and Political Rights. The 1898 Code of Criminal Procedure also prohibits police officers from threatening suspects or any other persons.

6. According to the source, the police prevented the relatives of Mr. Hassan or any legal counsel from meeting with him while he was in detention. It is reported that when relatives inquired about Mr. Hassan at the police station, the police repeatedly denied that he had ever been arrested or that he was detained there. The source argues that the inability to access legal counsel runs counter to article 33 (1) of the Bangladeshi Constitution, which states: "No person who is arrested may be detained in custody without being informed, as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice".

7. On 5 April 2013, Mr. Hassan was brought before a court for the first time since his arrest. The source argues that this is a violation of article 33 (2) of the Constitution of Bangladesh, which reads: "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate".

8. The source submits that detaining a person in police custody beyond 24 hours also violates article 61 of the 1898 Code of Criminal Procedure, which states: "No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court".

9. On 5 April 2013, the Fatikchhari police filed two cases against Mr. Hassan, accusing him of committing robbery (Case No. 01/13, dated 6 February 2013, under sections 395 and 397 of the 1860 Penal Code) and being in possession of illegal firearms (Case No. 02/30, dated 4 April 2013). The police requested the court to keep Mr. Hassan in remand for 10 days for the first case and 10 more days for the second case. The court granted five days remand for the first case and two more days for the second case. Mr. Hassan was returned to the Hat Hajari police station where he was reportedly again submitted to torture.

10. On 12 April 2013, Mr. Hassan was brought before the court to face new charges filed against him. The Fatikchhari police claimed that they had found destructive weapons in Mr. Hassan's possession (Case No. 05/38, dated 10 April 2013). The police requested that he be kept in remand for an additional 10 days. Although Mr. Hassan informed the court about the alleged torture inflicted upon him by the police, and showed his bodily injuries to the court, it ordered an additional three days in remand. Mr. Hassan was transported to the Hat Hajari police station, where he was allegedly tortured. The police detained him for an additional two days beyond the court order.

11. On 17 April 2013, Mr. Hassan appeared before the court on new charges of robbery as filed with the Rangunia police station (Case No. 8/20, dated 11 February 2013, under sections 385 and 397 of the 1860 Penal Code). The police requested that he be kept in remand for an additional five days, but the Court ordered just one day. Mr. Hassan was thereafter detained in Rangunia police station, where he was reportedly not tortured. The source alleges that he fell seriously ill from the torture inflicted during the lengthy remand period in the Hat Hazari police station.

12. In the source's opinion, all four cases against Mr. Hassan were fabricated. It attributes the charges filed against him and the alleged mistreatment by the police to be a result of a business dispute between Mr. Hassan and an individual who reported him to the police. The source alleges that the torture was inflicted to humiliate Mr. Hassan and to show the power and authority wielded by the police officers.

No response from the Government

13. On 10 September 2013, a communication was addressed to the Government of Bangladesh, requesting a response to the allegations made. The Working Group requested the Government to provide it with detailed information about Mr. Hassan's current situation and to clarify the legal provisions justifying his continued detention.

14. The Working Group regrets that the Government has not responded to its request. Despite the lack of information from the Government, the Working Group considers that it is in a position to render an opinion on Mr. Hassan's detention, in conformity with paragraph 16 of its methods of work.

Discussion

Burden of proof

15. The Working Group emphasizes that the Government of Bangladesh has not rebutted the prima facie reliable allegations submitted by the source. The Working Group refers to its jurisprudence, most recently opinions No. 41/2013 (Libya)¹ and No. 48/2013

¹ Working Group on Arbitrary Detention, opinion No. 41/2013 (Libya), adopted at its sixty-eight session (13–22 November 2013), paras. 27 and 28.

(Sri Lanka),² and recalls that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, the burden to refute the allegation made by the applicant lies with the public authority, because the latter is “generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out”.³

16. A similar approach has been adopted by the Human Rights Committee, according to which the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information.⁴

Observations

17. The Government of Bangladesh has not rebutted the allegations made about Mr. Hassan’s arrest without a warrant, the extensive torture that he was subjected to, nor his lack of access to legal counsel. The Government has also not rebutted the allegations that he was detained from 26 March to 5 April 2013 before he was brought before a judge, that the authorities denied to his relatives and legal counsel that he was in detention, nor that he was forced to sign documents without being made aware of their contents.

18. The source has shown that such acts are in violation of the Bangladeshi Constitution and Code of Criminal Procedure. The Working Group wishes to highlight that, in international law, the requirement of legality applies to any restriction of human rights, as set out, for example, in article 9, paragraph 1, of the International Covenant on Civil and Political Rights.

19. Article 9, paragraph 2, of the Covenant requires that anyone who is arrested be informed, at the time of arrest, of the reasons for his arrest and promptly informed of any charges against him. Article 9, paragraph 3, of the Covenant requires that anyone arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power. It seems to be the rule under the Bangladeshi Code of Criminal Procedure, 1898 (see para. 8 above) that the legal requirement to promptly bring an accused before a judge cannot exceed 24 hours. Furthermore, the Human Rights Committee has stated that delays for bringing an individual “promptly” before a judge must not exceed a few days.⁵ The Working Group considers that Mr. Hassan’s detention from 26 March to 5 April 2013 before he was brought before a judge is a clear violation of article 9 of the International Covenant on Civil and Political Rights as well as article 9 of the Universal Declaration of Human Rights.

20. The secrecy of Mr. Hassan’s detention, as evidenced by the authorities denying his detention to his relatives and to legal counsel, and refusing him access to legal counsel, constitutes a further violation of article 9 of the Covenant. With regard to legal assistance, the Working Group concurs with the view of the European Court of Human Rights that the particularly vulnerable position in which an accused often finds himself at the investigation

² Working Group on Arbitrary Detention, opinion No. 48/2013 (Sri Lanka) adopted at its sixty-eight session (13–22 November 2013), paras. 12 and 13.

³ International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment of 30 November 2010, para. 55.

⁴ See, for instance, Human Rights Committee, communications No. 1412/2005, *Butovenko v. Ukraine*, para. 7.3; No. 1297/2004, *Medjnoune v. Algeria*, para. 8.3; No. 139/1983, *Conteris v. Uruguay*, para. 7.2; No. 30/1978, *Bleier v. Uruguay*, para. 13.3.

⁵ See Human Rights Committee general comment No. 8 on the right to liberty and security of persons (art. 9), para. 2.

stage of proceedings “can only be properly compensated for by the assistance of a lawyer”.⁶ Similarly, Trial Chamber I of the International Criminal Tribunal for Rwanda in the *Bagosora et al.* case emphasized that the right to counsel “is rooted in the concern that an individual, when detained by officials for interrogation, is often fearful, ignorant and vulnerable; ... that vulnerability can lead to abuse of the innocent and guilty alike, particularly when a suspect is held incommunicado and in isolation”.⁷

21. Subjecting Mr. Hassan to torture during the police interviews and forcing him to sign documents, as alleged by the source, have further compromised the legal process and Mr. Hassan’s right to a fair trial, in violation of article 10 of the Declaration and article 14 of the Covenant. In this respect, the Working Group concurs with the view of the Appeals Chamber of the International Criminal Court that “where the breaches of the rights of the accused are such as to make it impossible for him/her to make his/her defence within the framework of his rights, no fair trial can take place ... Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial.”⁸

22. The sum of the violations in the present case is such that no fair trial of Mr. Hassan can take place with regard to the charges laid against him.

Conclusion

23. The Working Group considers that the first period of detention, from 26 March to 5 April 2013, before Mr. Hassan was brought before a judge and during which the authorities denied to his relatives and legal counsel that he was in detention, constitutes a violation of international law regarding arbitrary detention as set out in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. It considers that the unlawful detention of Mr. Hassan and other violations of his rights during that period and subsequently constitute a violation of his right to a fair trial under article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

24. These violations of international law relating to the right of a fair trial are of such gravity as to give the deprivation of Mr. Hassan’s liberty an arbitrary character. As such his detention falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

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

The deprivation of liberty of Rizvi Hassan is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It falls within category

⁶ European Court of Human Rights, *Pavlenko v. Russia*, application No. 42371/02, Judgment, 1 April 2010, para. 101.

⁷ International Criminal Tribunal for Rwanda, Trial Chamber I, Case No. ICTR-98-41-T, *The Prosecutor v. Bagosora et al.*, Decision on the Prosecutor’s Motion for the Admission of Certain Materials under Rule 89 (C), 14 October 2004, para. 16.

⁸ International Criminal Court, Appeals Chamber, Case No. ICC-01/04-01/06 (OA 4), *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to Article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006, para. 39.

III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

26. Consequent upon the opinion rendered, the Working Group requests the Government of the People's Republic of Bangladesh to remedy the situation of Rizvi Hassan and to bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

27. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Hassan and to accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

28. In accordance with article 33 (a) of its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 20 November 2013]
