

No. 48/2013 (Sri Lanka)

Communication addressed to the Government on 3 September 2013

Concerning Varnakulasingham Arulanandam

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 and 18 to 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22 and 25 to 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; disability; or other status, which is aimed towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case reported to the Working Group on Arbitrary Detention is summarized below.
4. Varnakulasingham Arulanandam, aged 42 at the time of his arrest, is a national of Sri Lanka. He is married with three young sons.
5. On 3 April 2012, Mr. Arulanandam was arrested at Katunayake International Airport while on his way to Qatar for employment. The arrest was allegedly carried out by police officers attached to the Terrorist Investigation Division (TID) of the Sri Lanka Police. No arrest warrant was presented. Mr. Arulanandam was immediately taken to the TID office in Colombo where he was detained for one month. He was then transferred to Boossa Detention Centre, where he remains today. His wife has

visited him twice in Boossa, on 13 August 2012 and 12 December 2012. She reports that Mr. Arulanandam has been severely tortured by TID officers.

6. The source indicates that, in mid-1996, before having completed school, Mr. Arulanandam was abducted and forcefully recruited into the Liberation Tigers of Tamil Eelam (LTTE). He was one of many children who were abducted by LTTE under its policy of requiring one child from each family in that region to serve in its military forces. In 2003, Mr. Arulanandam escaped from LTTE and rejoined his family. The source reports that Mr. Arulanandam was later recaptured by LTTE and was detained and punished until August 2006, when he was finally released.

7. Mr. Arulanandam settled with his wife and first son in Pudukuduirippu, but they were soon displaced, during the last phase of the civil war. On 17 May 2009, they went to Wattuwahal Camp and on 21 May 2009, they moved to a camp for internally displaced persons in Chettikulam. Mr. Arulanandam's two other sons were born in that camp. While in the camp, Mr. Arulanandam and his family were asked to identify themselves if they had any connection to LTTE. On identifying himself, Mr. Arulanandam was separated from his family and taken to Vaani Vidyalam school in Vavuniya before being transported to Colombo.

8. The source reports that Mr. Arulanandam was then taken to Galle, where he appeared before the Magistrate's Court on 21 January 2010. He was informed of the reference number of his case but was unable to obtain any further information. He was released by the Galle magistrate for lack of any credible evidence against him. Following his release, he was summoned to TID at Colombo for further interrogation on several occasions. Mr. Arulanandam obtained a release order from the Galle magistrate on 3 April 2012. He was rearrested the same day at Katunayake International Airport.

9. The source alleges that Mr. Arulanandam was arrested without any legal basis and that he has not had the opportunity to challenge his detention before a court of law. It submits that the deprivation of his liberty may be considered arbitrary under categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

Response from the Government

10. On 3 September 2013, the Working Group communicated the allegations of the source to the Government of Sri Lanka, requesting the Government to provide it with detailed information about the current situation of Mr. Arulanandam and to clarify the legal provisions justifying his continued detention.

11. The Working Group regrets that the Government did not respond to that request within 60 days or request an extension to submit a response, in accordance with paragraph 15 of the Working Group's methods of work. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Mr. Arulanandam, in conformity with paragraph 16 of its methods of work.

Discussion

Burden of proof

12. The Working Group emphasizes that the Government of Sri Lanka has not rebutted the prima facie reliable allegations submitted by the source. The Working Group refers to its constant jurisprudence, most recently its opinion No. 41/2013 (Libya),¹ 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."²

13. 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.³

Previous opinions concerning Sri Lanka

14. The Working Group refers to its previous opinions on arbitrary detention in Sri Lanka, in particular No. 9/2013 (Sri Lanka) concerning Santhathevan Ganesharatnam. In paragraph 40 of that opinion, the Working Group reminded the Government of Sri Lanka of its duties to comply with

international human rights obligations, including the duty not to detain arbitrarily, to release persons arbitrarily detained and to provide compensation to them. In a number of opinions, the Working Group has recalled that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity. The duty to comply with international human rights that are peremptory and erga omnes norms, such as the prohibition of arbitrary detention, rests not only on the Government but on all officials, including judges, police and security officers and prison officers with relevant responsibilities. No person can contribute to human rights violations.⁴

Observations

15. The Government has not rebutted the allegations that Mr. Arulanandam was arrested without an arrest warrant, that he was subjected to severe torture and that he has been in detention since 3 April 2012 without the opportunity to challenge his detention before a court.

16. The Government has also not rebutted the allegations about Mr. Arulanandam's release and rearrest, including that he was rearrested on the basis of the same allegations in relation to which he had been acquitted. He was released by Galle Magistrate's Court for lack of any credible evidence against him. Following his release, he obtained a release order from Galle Magistrate's Court on 3 April 2012 and was promptly rearrested the same day. The Working Group wishes to highlight that rearrest by Government security services after a court release constitutes a particularly aggravated violation of international law and undermines the rule of law.

Disposition

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

The detention of Mr. Arulanandam constitutes violations of articles 7, 9 and 11 of the Universal Declaration of Human Rights and articles 9 and 12 of the International Covenant on Civil and Political Rights. The detention falls within categories I and III of the categories applicable to the cases before the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Arulanandam and 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.

19. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Arulanandam immediately 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.

20. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take into account its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁵ The Working Group also reiterates that compliance with duties under international law is incumbent upon all government bodies and officials involved in the detention of Mr. Arulanandam.

21. In accordance with article 33 (a) of its revised methods of work, 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 19 November 2013]

¹Working Group on Arbitrary Detention, opinion No. 41/2013 (*Libya*), adopted at its sixty-eighth session, 13-22 November 2013, para. 27.

²*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, International Court of Justice, Judgment of 30 November 2010, para. 55.

³See, 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.

⁴Working Group on Arbitrary Detention, opinions No. 26/2012 (Sri Lanka) and No. 47/2012 (Democratic People's Republic of Korea).

⁵Human Rights Council resolution 24/7 on arbitrary detention, paras. 3, 6 and 9.