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Human Rights Council Working Group on Arbitrary Detention

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No. 37/2012 (Spain)

Communication addressed to the Government on 25 May 2012

Concerning Adnam El Hadj

No response has been received from the Government.

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. Mr. Adnam El Hadj, a Moroccan national, was arrested by officers of the National Police during an identity check in Madrid. He was taken to the migrant holding centre (CIE) located in the Aluche quarter of the Latina district of Madrid, where he was detained. He was given the registration number 933 and placed with two other detainees in a room located in module 1 on the first floor.

4. According to the source, at 4 a.m. on 8 May 2012, a number of police officers entered his room to begin procedures to expel a Moroccan compatriot. When he awoke, Mr. El Hadj started to say goodbye to his companion and went on to insult the police officers, calling them racists. The police then handcuffed him, tied his legs together and dragged him by his hair down the stairs leading to the dining area where he was forced to kneel and was punched, kicked and beaten with truncheons. The staircase on which he was attacked is an area not covered by the CIE's closed-circuit surveillance system. While they were hitting him, the police officers allegedly shouted: "You came to Spain to eat for nothing. You're going to clear off and they'll feed you in your own country you filthy Moor." They also insulted Mr. Hadj's mother and father.

5. Mr. El Hadj was able to identify only one of the five police officers who hit him, whose ID number was 121224. Two of the others who hit him were short and bearded. Like the other officers, they pulled their jackets up to avoid being identified. Other police officers witnessed the incident although they did not take part in the beating. When they returned to his cell, the officers told the other inmates to leave and again beat Mr. El Hadj. When they left, they took away his mattress and left him lying on the floor.

6. The source affirms that Mr. El Hadj was a victim of racist and xenophobic insults from the moment of his arrival at the CIE in Aluche.

7. After the beating, the centre's inmates refused to eat breakfast as a sign of protest. The centre's medical service, SERMEDES, issued a medical report certifying the numerous bruises and blows he had received as a result of his nocturnal beating by the police and ordered him to be transferred to the 12 de Octubre University Hospital in Madrid. However, Mr. El Hadj was not taken to hospital. No forensic examination was carried out and no photographs were taken of his injuries. He was not given the medical and hospital care to which he was entitled.

8. The source adds that in Spain there are no proper regulations covering the migrant holding centres. Detainees do not have access to judges or prosecutors to appeal or lodge complaints. Nor are they entitled to the assistance of a lawyer of their choice. A writ dated 21 December 2011 and signed by Judge Ramiro Garcia de Dios, who sits on number 6 investigating court in Madrid and who is one of the judges responsible for supervising the Aluche holding centre, describes the "evident overcrowding and lack of space" in the centre and refers to its rooms as "wholly unsuitable, with no toilet facilities". At night, the inmates are locked up in their rooms and not allowed out to go to the toilet.

9. The source adds that sick foreign inmates, even those with communicable diseases, are kept on the same premises as the healthy. It states that a female detainee, Samba M. died from meningitis at the same centre without receiving any medical treatment. Foreign detainees may be visited by their relatives only for a short time in the evening. NGOs are allowed into the centre only at visiting times.

10. According to the source, conditions of detention at the Aluche centre are worse than those of prisoners in Spanish jails. Foreigners are taken there after identity checks without any form of supervision or effective control by the prosecution service or the examining courts.

11. Mr. El Hadj was interned in the Aluche CIE simply because he was unable to provide proof that he was a legal resident of Spain and without having committed an offence.

Response from the Government

12. No response has been received from the Government. The Working Group is in a position to issue an opinion on this case.

Discussion

13. The presentation of the facts provided above and the checks carried out by the Working Group confirm that Mr. Adnam El Hadj, a Moroccan citizen who was in Spain seeking refuge, was detained on 8 May 2012 in order to expel him from the country and treated in the manner described above in the communication by the police officers who detained him. At the holding centre to which he was taken, he was harassed, ill-treated and tortured, as well as suffering insults that were highly racist — and therefore discriminatory — including phrases such as “you came to Spain to eat for nothing” and “let them feed you in your own country”. He managed to identify one of the officers thanks to his identity badge, but all of them hid their faces while they were taking part in the acts of torture. The harassment was so extreme that the other internees refused to eat breakfast in protest. All the facts are recorded in a medical record and in the statements made by activists defending the rights of migrants.

14. His expulsion from Spain, which was apparently due to take place during the next few days, was allegedly brought forward to 8 May 2012 on account of the disturbance on the premises and the observations made by humanitarian workers who learned of the incident.

15. The officials who detained Mr. Adnam El Hadj failed to produce a warrant for his arrest. He had no effective remedy or opportunity to appeal, as required under article 8 of the Universal Declaration of Human Rights and articles 2 paragraph 3 and 9, paragraph 4 of the International Covenant on Civil and Political Rights and, more specifically, article 62.2 of Spain’s Act on the rights and freedoms of foreigners and their integration in Spain (LOEX). Nor was he treated with dignity, as required by article 10, paragraph 1 of the Covenant.

16. Mr. El Hadj was allegedly transferred to Tarifa and subsequently – it is assumed expelled to Morocco.

17. The Working Group finds that Mr. El Hadj’s detention was arbitrary because of the absence of a warrant, the lack of access to rapid judicial remedies to end his detention and the abuses to which he was subjected.

18. Although the methods of work of the Working Group provide that the case will be filed if the detained person has been released, they also empower the Group to render an opinion on whether the detention was arbitrary, if it deems it necessary. In the case at hand,

it is all the more necessary to render an opinion because the person concerned was not released, but apparently expelled from the country, in violation of Spanish law itself, which grants him a right of appeal which, on account of the action of State officials, he was unable to exercise. Moreover, it is hard to conceive expulsion from the country as a form of release.

19. The facts set out in the above paragraphs make it possible to classify the detention of Mr. El Hadj as arbitrary under category III of the methods of work of the Working Group, since it represents a violation of such gravity as to give the deprivation of liberty an arbitrary character. It is also arbitrary under the terms of category IV, because he was an immigrant and was not allowed the possibility of administrative or judicial review or remedy to challenge his detention. Furthermore, the case at hand should be considered as falling into category V because the deprivation of liberty affecting Adnam El Hadj was motivated by discrimination based on his national, ethnic and social origin, thus disregarding the essential equality of all persons for the recognition and enjoyment of their human rights.

Disposition

20. In the light of the foregoing, the Working Group issues the following opinion:

The detention of Mr. Adnam El Hadj was arbitrary, falling within categories II, IV and V of the methods of work of the Working Group.

21. In view of the alleged expulsion from Spain of the person concerned, the Working Group recommends that the Government award him compensation in proportion to the harm caused.

22. Notwithstanding the above, the Working Group decides to transmit the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and to the Special Rapporteur on the human rights of migrants.

[Adopted on 30 August 2012]