



General Assembly

Distr.: General
6 September 2016

English only

Human Rights Council

Thirty-third session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-15417(E)



* 1 6 1 5 4 1 7 *

Please recycle



BANGLADESH: UN can assist government reform justice institutions to protecting people from arbitrary detention

The Asian Legal Resource Centre (ALRC) directs the attention of the United Nations Human Rights Council (UNHRC) and the Special Procedures to the epidemic of arbitrary detention in Bangladesh, requesting the UNHRC and the Special Procedures to engage actively to protect the people of the country.

Deprivation of liberty through arbitrary detention has become a norm of law-enforcement and as default method to “rule” the country for those who legitimately or illegitimately occupy office. Different draconian legislations enable the government and the law-enforcement agencies in the process of arbitrary detention. The laws that are most commonly used for detaining people arbitrarily are: i) Information and Communications Technology Act-2006 (Amended in 2013); ii) Special Powers Act-1974; Anti-Terror Act-2009 (Amended in 2013), Anti-Corruption Commission Act-2004 (Amended in 2016); and the Code of Criminal Procedures-1898.

For the purpose of perpetuating government power, the government detains those who attempt to criticize the elites. Since the fake election in January 2014, Bangladesh has lost the limited democratic space it had. In absence of competent justice institutions, there is hardly any resort to protect rights and liberties of the citizens from the spree of arbitrary abuse.

The policing system of Bangladesh maintains the century-old practice of arresting people on “suspicion”. The police and the paramilitary forces, such as the Rapid Action Battalion (RAB) and Border Guards Bangladesh (BGB), routinely arrest and detain. Following the commission of an “offence”, the police are reluctant to collect admissible evidence regarding the crimes concerned. Instead, they randomly arrest people at their will and later show the detainees “arrested” in criminal cases. A detainee can be implicated in one or more criminal cases depending on the bargains of bribery, political affiliation, and intervention in the process. Torture is inseparable from arrest and detention in the country.

For example: in June 2016, the government started a drive against “Islamic militants” in the country. In two weeks’ time over 15,000 people were arrested and arbitrarily detained, according to the official record of the Bangladesh Police. The police claimed that 194 were believed to have connections with ‘militant’ groups. The detainees were allegedly forced to pay huge amount of bribes to the police for saving their life from “crossfire” or “gun-battle”, which are the official code words for extrajudicial execution. Many detainees allege that the police have extorted bribes from their relatives on the condition that the detainees will not be shot in the limbs. The police have established a trend in last few years of shooting the detainees, who are handcuffed and their legs fastened. Then the police prevent the wounded detainee from receiving treatment for their bullet-wounds, which causes permanent disability or amputation of the limbs.

Detention centres and prisons have become overcrowded following mass-arrest and detention. The prison authorities have been cited in the media reports, and the details are alarming. In a total of 68 prisons of the country, having a capacity of housing a total of 34,700 inmates, actually accommodate extra 40,000 inmates, as a result of this arbitrary detention *en masse*. These conditions force detainees to stay in makeshift cells that were, in fact, toilets inside the prisons.

Arbitrary detention is also unavoidable prior to any political rally or public protest. The law-enforcement agencies detain a large amount of activists, supporters of the opposition parties, as well as ordinary citizens, to silence the society, fearing a people’s uprising against a repressive government.

The Judiciary, in particular, plays a dubious role in the country. On one hand, the higher Judiciary – especially the High Court Division and the Appellate Division of the Supreme Court – has previously passed landmark judgments to ban arbitrary arrest and detention. On the other hand, the entire Judiciary –the Magistrate’s Courts, Sessions Courts, and the Supreme Court – directly contributes to process the arbitrary detention of citizens for the purpose of benefitting the government of the day.

The Magistrate's Courts mostly entertain the calls of the police who object to bail petitions although such objections do not contain any admissible evidence against the detainees. As a result, a detainee is forced to stay in prison at least for two weeks; this is often prolonged for months, if the detainee is unable to afford bribes and fees to those lawyers who might be influential enough to obtain bail from the Courts.

Having any political affiliation may determine the fate of the detainee at different stages of the process. For example, if someone is affiliated to the ruling political party, the detainee may be lucky to get an influential leader to intervene in his/her favour. Such intervention will be very effective for the detainee's quick release from police custody, prior to being produced before a Magistrate or being transferred to a prison. The fate would be just the opposite for a detainee who may have affiliation with the opposition party, or have no affiliation with any political group. The pro-opposition or a-political detainees will rarely get bail without approaching the Supreme Court. As a matter of fact, the Attorney General has been pro-actively halting the release of the detainees, despite the Supreme Court's orders, doing so by sending electronic messages to the prison authority claiming, "the State plans to appeal against the release order".

Bangladesh's justice institutions have created a number of iconic cases of arbitrary detention in the process of maintaining hardcore support for the incumbent government. Mr. Mahmudur Rahman, Acting Editor of the *Daily Amardesh*, a newspaper that the government has shut down since the arrest and detention of Mahmudur in April 2013, has been detained for three and half years. Mahmudur was detained for publishing news of a corruption scandal, involving the Prime Minister's son and one of the Advisers, as well as a leaked Skype conversation of a Judge asking a Bangladeshi sitting in Brussels to write a 'judgement' for the International Crimes Tribunal, which is trying crimes against humanity committed at the time of war of independence in 1971. The incumbent government has manufactured 73 criminal cases against him with trumped up charges while the Judiciary has connived with the government to prolong the detention.

Likewise, Mr. Shafik Rehman, a writer, TV Presenter, and formed Editor, has been detained in a trumped up case of "conspiring to kidnap and kill the Premier's son in the USA". Shafik was detained on 16 April 2016. The police have not submitted any evidence against him so far. The 82-year-old British citizen is still in detention without having faced any trial.

Mr. Abdus Salam was the Chairman a private television channel, ETV, which published a political speech of the son of current head of the opposition party, who is currently in exile in the UK. As a result, Mr. Salam was detained on 6 January 2015, and was later charged in a "pornography" case, and remains in detention without trial. There are many similar cases of prolonged arbitrary detention without a trial.

In the absence of democracy, the authoritarian government of Bangladesh can comfortably use the justice institutions to control the people by all means, and this includes the use of rampant arbitrary detention. Credible investigation is impossible in the existing justice institutional system. The dysfunctional judicial system and lack of democracy contribute to the unabated deprivation of liberty, imposed arbitrarily.

The ALRC urges the Human Rights Council and the Special Procedures to change their conventional pattern of intervention as far as the protection of people from arbitrary detention is concerned. Mere recommendations to "investigate, prosecute, and adjudicate" will not help the victims from arbitrary detentions in countries like Bangladesh. The UN Human Rights experts should be able to understand the ground realities comprehensively and quickly. There must be global initiatives to assist and insist that there be domestic justice institutional reforms to enable the practice of the universal norm of fair trial.