



General Assembly

Distr.: General
24 February 2011

English only

Human Rights Council

Sixteenth session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre (ALRC), 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.

[14 February 2011]

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

Saudi Arabia: Denial of fair trial

The right to fair trial for migrant workers who face criminal charges in countries where they have gone for employment remains an important human rights problem that merits the attention of the Human Rights Council. In this regard, particular importance needs to be given to the migrant workers employed in Saudi Arabia. This issue is well-illustrated in the case of the a 17-year-old Sri Lankan girl who went for employment in Saudi Arabia and who faced charges for murder within less than one month at the employer's residence.

Summary of the case Coming from a poor and war-torn family Rizana Nafeek went to Saudi Arabia as a maid in May 2005. A recruitment agency in Sri Lanka altered her date of birth in her passport making her 23 years-of-age in order to employ her, when in fact she was only 17 at the time. When the infant of her employers died in her care, a confession of murder was drawn from Rizana under harsh treatment and without a proper translator at the police station. On this ground, she was charged with murder and sentenced to death by beheading in 2007. After getting access to a lawyer and being able to express the circumstances in Tamil, the confession was later retracted. According to Nafeek, the child suffocated while being bottle-fed and due to her lack of experience and young age, she was unable to save him. The case was appealed, enabled by funds from human rights groups. However, after a highly questionable and arbitrary process in court, the death sentence was confirmed in late October 2010.

Issues

The issues of fair trial arising from this case are as follows:

1. There was no evidence of any sort available to establish the murder of this infant. The accused young girl was never given an opportunity to look into any evidence which would establish murder of the child, since there was no such evidence in the first place. There was only an accusation made by the parents, who would naturally have been in a state of shock and anger at the death of their child. However, there was no forensic or any other evidence to establish any attack on the child leading to the death. At the time of the arrest and at the time of the first interrogation by the police, which was when a confession was extracted, the police talked in Arabic, the accused young girl knew only Tamil and there was no translation. This aspect of lack of translation was later established at the appeal stage when the court summoned the interpreter to be brought to the court for examination. No person was brought to court as there was no such interpreter. It was reported that the person whose name had been entered as the interpreter was, in fact, an Indian citizen from Karnataka state and his native language was not Tamil but the language of the Karnataka people, Kannada.

2. At the stage of the trial, the accused young girl did not have any legal representation.

3. Even at the stage of the trial, she was not given a proper interpretation and not even persons from the Sri Lankan consulate were present at the trial.

4. In any event, at the time of the alleged incident, she was 17 years old and this has been established at the appeal stage very clearly.

5. At the initial trial, she was sentenced to death solely on the basis of the confession which has been obtained under the circumstances described above. Later, due to the representations made to the highest authorities in Saudi Arabia, the case was sent for reconsideration and the issue which was to be particularly clarified was the issue of the

translation. On that issue, the evidence at the re-inquiry was that there was no interpreter and the person whose name that had been given as the interpreter was a person who spoke Kannada, a language spoken in Karnataka state in India, and thus the fact of the absence of interpreter was established. However, the court re-confirmed the death sentence solely on the basis of the confession, which is said to be binding under the Saudi Arabian law. It is also the position of the accused young girl that the confessions as obtained by use of force. Subsequent to the re-confirmation of the death sentence, His Excellency, the President of Sri Lanka, appealed to the His Majesty, the King of Saudi Arabia, pleading for the pardoning of the accused young girl. The case is now pending decision by His Royal Highness the King. It is a well-established principle of international law that every accused is entitled to a fair trial. It is also a well-established principle that a confession cannot solely be the basis for a conviction for a serious charge, such as murder. Besides this, all accused are entitled to legal representation, as well as proper interpretation at the stage of the trial. In any case, before a charge of murder is made, forensic evidence should be led to satisfy that a murder had in fact taken place. Besides all this, the young age of the accused, who was 17 years old at the time, is also an impediment to holding her guilty of such a serious charge. The issue of guaranteeing a fair trial to the migrant workers should be seriously addressed by the Human Rights Council. This will require serious amendments to the law in Saudi Arabia so that the rights guaranteed under the International Covenant of Civil and Political Rights under Article 14 are ensured through proper legislation under the Saudi Arabian law. This should include, also, the right to an appeal both on facts on law. Under these circumstances, until such laws are amended, the immediate attention of Saudi Arabia should be drawn into this particular case, since the time available to save of the life of Rizana Nafeek, the accused in this case, is short.
