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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016

Opinion No. 27/2016 concerning Abdelkader Belliraj (Morocco)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 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.
2. In accordance with its methods of work (A/HRC/30/69), on 21 June 2016 the Working Group transmitted to the Government of Morocco a communication concerning Abdelkader Belliraj. The Government replied to the communication on 20 August 2016. The State is a party to the International Covenant on Civil and Political Rights.
3. 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 him or her) (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);

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(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Belliraj, born in 1957, habitually resides with his family in Evergem, Belgium.
5. According to the source, Mr. Belliraj arrived in Morocco by air on 16 January 2008. He was arrested without a warrant on 18 January 2008 on the public highway in Marrakech by a group of plain-clothes police officers, who refused to inform him of the reasons for his arrest.
6. The source reports that Mr. Belliraj was then forced into an unmarked vehicle and blindfolded, before being taken to a destination unknown to him. According to the information submitted, it appears that the place was four hours' drive away and might have been a military barracks, as the national anthem was played there every morning.
7. The source alleges that Mr. Belliraj was detained incommunicado for 28 days and that, during this period, he was subjected to acts of torture. The source reports that Mr. Belliraj was regularly beaten, suspended for long periods of time, threatened with death, deprived of food and placed in isolation in a tiny cell.
8. Following this ill-treatment, Mr. Belliraj was reportedly forced to sign documents presented to him by the alleged perpetrators of the torture. These documents stated that he admitted to having played a role in the murder of six individuals in Brussels between 1988 and 1989, including Dr. Joseph Wybran, then president of the Coordinating Committee of Jewish Organizations of Belgium, and the rector of the Great Mosque of Brussels.
9. The source alleges that Mr. Belliraj was formally transferred to the premises of the criminal investigation department on 16 February 2008.
10. On 19 January 2008, fearing that he had been the victim of an accident, his family started looking for him in all the hospitals in the region. They also reported his disappearance to the police, which apparently claimed to have no knowledge of what had befallen him. The source mentions that it was during a press conference organized on 20 February 2008 by the Minister of the Interior, Chakib Benmoussa, that Mr. Belliraj's wife learned he had been arrested.
11. During the press conference, the Minister is said to have announced "the dismantling of a terrorist network established in 1992, with ties to Al-Qaida and composed of radical Islamists, which reportedly planned to conduct terrorist activities in Morocco". In addition, he described Mr. Belliraj as the head of the network of some 30 persons and falsely stated that he had been arrested on 18 February 2008 on his arrival at Mohamed V airport in Casablanca.
12. The source reports that most of those arrested during this operation had no particular ties to one another or to Mr. Belliraj. The source claims that the group included both socialist party activists and members of the Islamist movement.
13. According to the source, Mr. Belliraj was brought before the public prosecutor in Salé without the presence of a lawyer on 27 February 2008, 40 days after his arrest. The Crown Prosecutor at the Salé Court of First Instance then ordered his pretrial detention and

requested the opening of a criminal investigation on charges of “threatening the internal security of the State” and “formation of armed groups”.

14. The source alleges that, on the same day, Mr. Belliraj was brought before an investigating judge without the presence of a lawyer. He was accompanied by one of the police officers who had participated in his questioning, who pushed him to confirm to the judge the full content of his statement, failing which he would be returned to detention and again subjected to torture. The judge did not consider it necessary to order a medical examination or initiate an inquiry in spite of obvious signs of beatings and torture and the accused man’s deplorable physical and psychological state.

15. On 2 April 2008, during his second appearance before the investigating judge, Mr. Belliraj had the assistance of a lawyer and challenged the content of the documents that had been presented to him previously. He stated that he had been held incommunicado for almost a month. In addition, he maintained that, during that period, he had been subjected to acts of torture, following which he had been forced to sign the statement. The source further claims that his lawyer denounced the falsification of the date of his actual arrest and the presence of one of the perpetrators of the alleged acts of torture in the office of the investigating judge on 27 February 2008 during Mr. Belliraj’s first appearance. He formally requested that the officer in question be heard as a witness. Despite the seriousness of the allegations, the source states that the investigating judge did not consider it necessary to initiate an inquiry.

16. On 16 October 2008, the “Belliraj Group” trial began. The source reports that 35 individuals were accused of “threatening the internal security of the State by forming armed groups” and “establishing a gang with a view to committing acts of terrorism”, including Mr. Belliraj, who was also charged with “voluntary homicide with premeditation”.

17. The source submits that, during the trial, Mr. Belliraj declared that the confessions, which constituted the only incriminating evidence against him, had been obtained through torture and that there was no other material evidence on file. The source also states that the other defendants claimed to have been subjected to torture and forced to sign confessions after suffering ill-treatment.

18. During the trial, the defence lawyers reportedly demonstrated that documents used in the proceedings had been falsified. They pointed out that, in some cases, including that of Mr. Belliraj, the date of the defendant’s arrest had been modified and that some individuals had therefore been arrested earlier than the date indicated in the police report.

19. Some of the defendants also claimed during the hearings that the police reports did not reflect their actual statements. The judges did not consider it necessary, however, to initiate an inquiry to ascertain the veracity of these allegations.

20. The source reports that, on 28 July 2009, the day before the conclusion of the trial, firearms allegedly belonging to the defendants were presented to the media. These weapons were on open display in the courtroom and were not accompanied by a proper seizure report. The source notes that no expert fingerprint or DNA assessment had been conducted to establish a link with the defendants.

21. According to information provided by the source, the “Belliraj” trial concluded on 29 July 2009 with the conviction of the 35 defendants, whose sentences ranged from 1 year to life imprisonment; the court did not make any reference to the serious procedural irregularities. The source notes that, at the conclusion of the trial, Mr. Belliraj was sentenced to life imprisonment.

22. The source states that, on 16 July 2010, the Rabat court of appeal upheld the verdict handed down in first instance following a summary review. In June 2011, the court of cassation rejected Mr. Belliraj’s appeal, rendering his sentence of life imprisonment final.

23. According to the information provided by the source, following Mr. Belliraj's conviction by the Moroccan courts, the widow of Dr. Wybran, who was murdered in Brussels on 3 October 1989, requested the reopening of judicial proceedings in Belgium.

24. The source alleges that, after investigating the conditions of Mr. Belliraj's arrest, detention and trial in Morocco, on 25 October 2013 the Office of the Federal Prosecutor of Belgium requested that the case be dismissed on the grounds that the confessions relating to the killings had been obtained under duress and were therefore unusable in an assize court.

25. On 17 April 2015, the Brussels Court of First Instance in chambers recalled in an order the position of the Office of the Federal Prosecutor, which considered the hypothesis that Mr. Belliraj's statements had been obtained under torture to be "plausible and credible".

26. The source considers that this case falls within category I of the categories referred to by the Working Group when considering cases submitted to it, since there is no legal basis justifying the incommunicado detention of Mr. Belliraj or his conviction on the basis of confessions obtained under torture. The source recalls that article 9 (1) of the International Covenant on Civil and Political Rights explicitly provides that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Mr. Belliraj, however, was arrested on 18 January 2008 without a warrant and without being informed of the charges against him. In addition, the source asserts that he was prevented from contacting his family, was denied access to a lawyer and was not brought before a judge until 40 days after his arrest. Held incommunicado until 16 February 2008, he was not allowed any legal remedy to challenge the lawfulness of his detention and was deliberately denied the protection of the law. He was provided with the services of a lawyer only during his second appearance before the investigating judge, on 2 April 2008.

27. The source therefore considers that, for almost two and a half months, that is, from the date of his arrest, 18 January 2008, to the day when he was allowed to receive assistance from a lawyer for the first time, 2 April 2008, Mr. Belliraj's detention was not conducted in accordance with the procedure established under Moroccan law, in this case Act No. 03-03 on combating terrorism, which provides for a supervised 30-minute meeting between the suspect and his or her lawyer during the period of police custody and sets the maximum duration of such deprivation of liberty at 12 days.

28. In addition, the source points out that, under article 293 of the Moroccan Code of Criminal Procedure, any statement obtained by force or coercion is considered null, and that Mr. Belliraj was sentenced to life imprisonment on the basis of confessions obtained under torture. It highlights that, in this case, these confessions were admitted in the absence of any investigation into the allegations they contained.

29. The source submits that, despite the obvious signs of abuse suffered by Mr. Belliraj during custody, neither the Crown Prosecutor nor the investigating judge ordered a medical examination as required under article 74 (8) and article 134 (5) of the Moroccan Code of Criminal Procedure.

30. The source considers that this case falls within category III of the categories referred to by the Working Group when considering cases submitted to it, since Mr. Belliraj's deprivation of liberty constitutes a violation of the international commitments entered into by Morocco and, in particular, articles 9 and 14 of the International Covenant on Civil and Political Rights. It adds that Mr. Belliraj's deprivation of liberty is a clear violation of the right to a fair trial and the guarantees established by those provisions, since he was arrested without a warrant, held incommunicado for almost a month and subsequently continued to be subjected to grave violations of his right to a fair trial.

31. The source recalls that article 14 (3) and article 9 (2) and (3) of the International Covenant on Civil and Political Rights guarantee the right of anyone arrested or accused of having committed a criminal offence to be informed promptly of the reasons for their arrest and the charges against them. However, at the time of his arrest, Mr. Belliraj was not shown an arrest warrant or informed of the reasons for his arrest. Furthermore, article 14 of the Covenant guarantees the right of the arrested person to “communicate with counsel of his own choosing”, whereas, in the present case, Mr. Belliraj was held incommunicado and questioned several times without the presence of a lawyer. He was not able to communicate with a lawyer until 40 days after his arrest.

32. Furthermore, States parties to the International Covenant on Civil and Political Rights must ensure the right of all detainees to challenge their detention before a judicial authority and under no circumstances may they compel them to incriminate themselves. The source alleges that there is no doubt that Mr. Belliraj was forced to testify against himself and to confess guilt against his will, having been made to sign a confession under threat of torture. It also recalls that the court relied exclusively on that confession to sentence Mr. Belliraj to life imprisonment, despite the fact that Mr. Belliraj had disavowed all of the statements he had purportedly made to the police and stated that he was forced to sign them without reviewing them.

33. The source adds that the above facts constitute a violation of article 15 of the Convention against Torture, which provides that “each State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings”. It recalls that, in the present case, the statement obtained under torture was not only invoked as evidence but constituted the main evidence used to sentence Mr. Belliraj to life imprisonment.

Response from the Government

34. The Government of Morocco duly responded to the communication transmitted to it. The reply was received by the secretariat on 20 August 2016.

35. In its reply, the Government merely denied the allegations of violations without providing any evidence in support of this denial. The Government does not contest Mr. Belliraj’s arrest or continued detention.

Discussion

36. In the present case, the source presented coherent facts that are, in principle, credible, and the source itself is reliable. These facts are corroborated by the Belgian judicial document introduced as evidence by the source (order of the Brussels Francophone Court of First Instance in chambers, 17 April 2015). It was therefore up to the Government to refute the source’s allegations, providing relevant supporting evidence. In this case, the Government could have produced the police reports, investigation documents, indictment, judgments and other documents that it must have in its possession, such as the documents related to the letters rogatory initiated by Belgium, to support its position. The Government did not produce any such documents and merely denied the allegations. However, the source submitted evidence that strengthened the credibility and reliability of its claims. The Working Group therefore considers the facts to be as reported by the source.

37. Mr. Belliraj has dual Belgian and Moroccan nationality. While on holiday in Morocco, he was arrested on 18 January 2008 by plain-clothes police officers and held incommunicado for 28 days, without ever being informed of the reasons for his arrest and detention. During his detention, he was allegedly tortured several times until he was forced to sign a statement that he was not allowed to read, without at any point having access to a lawyer. Only on 20 February 2008 did his family learn, during a press conference by the

Minister of the Interior, that he had been arrested and charged with heading a terrorist network in operation since 1992 and with ties to Al-Qaida. He would later be accused of killings committed in Belgium in the late 1980s. He was not brought before an investigating judge until 27 February 2008, again without the presence of a lawyer, while accompanied by one of the police officers who had participated in his torture.

38. On 2 April 2008, appearing a second time before the investigating judge, this time assisted by a lawyer, Mr. Belliraj contested the statements he had signed and mentioned the abuse he had suffered. However, the judge took no action. Then, during the trial, evidence was presented at the last minute, without the parties being able to discuss it. Once again, the court ignored the allegations of torture and confessions obtained under duress. At the end of the trial on 29 July 2009, Mr. Belliraj was sentenced to life imprisonment. One year later, on 16 July 2010, the Rabat Court of Appeal upheld the verdict. In June 2011, the Court of Cassation also confirmed the verdict, which then became final.

39. In the meantime, the widow of one of the victims murdered in Belgium requested that the case be reopened in Belgium, but the Belgian Crown Prosecutor considered that the allegations of torture in detention in Morocco were plausible and credible and therefore requested that the case be dismissed. Moreover, the Belgian judge noted that the rights of defence had not been respected. Recognizing that the protections afforded under the European Convention on Human Rights had not been respected in this case, the Belgian court decided that the request to reopen the case could not be granted.

40. In the opinion of the Working Group, this case involves two major violations. Firstly, there was a violation of procedural standards, including the obligation to notify the cause of the arrest or detention (article 9 (1) of the International Covenant on Civil and Political Rights) and the obligation to respect the rights of the accused to legal assistance and the means to defend himself (article 14 of the Covenant). This violation falls within categories I and III, as defined in the aforementioned methods of work.

41. Secondly, there was a violation of a fundamental rule of criminal justice, according to which confessions obtained under duress are worthless in any criminal proceedings. The prohibition on torture is an absolute or peremptory norm. The violation of this norm, accompanied by the use of the illegally obtained confession, constitutes a major additional circumstance that renders the proceedings totally unfair, such that the violation of the right to a fair trial is aggravated.¹ This violation also falls within category III.

42. To make the situation even more serious, the judges in the successive proceedings in Morocco failed in their duty to take into consideration the arguments of the defence, particularly when the defendant claimed to have been tortured. At the very least, a proper investigation should have been ordered to establish the truth before moving forward, especially given that the trial ended with the conviction of the defendant on the basis of confessions obtained under torture. This shows a lack of independence on the part of the representatives of the judiciary meriting more in-depth evaluation through the most appropriate special procedure.

¹ This essential rule regarding the prohibition on torture and the non-admissibility of evidence obtained under torture in criminal proceedings is clearly established by the Human Rights Committee in its general comment No. 20 (1992) on the prohibition of torture and cruel, inhuman or degrading treatment or punishment and general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. Furthermore, the European Court of Human Rights has also recognized this rule by referring to the right to a fair trial as defined in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), including in the case of *Gäfgen v. Germany* (Grand Chamber, judgment of 1 June 2010), para. 166.

Disposition

43. In the light of the foregoing, the Working Group renders the following opinion:

The arrest and continued detention of Abdelkader Belliraj are arbitrary and fall within categories I and III of the categories referred to by the Working Group when considering cases submitted to it; the Government of Morocco has an obligation to put an end to this situation and to provide the victim with appropriate reparation.

44. The Working Group therefore calls for the immediate release of Mr. Belliraj and appropriate reparation for the serious violations he has suffered.

45. In accordance with paragraph 33 (a) of its methods of work, the Working Group is referring the case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

46. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Belliraj has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Belliraj;
- (c) Whether an investigation has been conducted into the violation of Mr. Belliraj's rights and, if so, what the outcome of the investigation was;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Morocco with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

47. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

48. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

49. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of 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.²

[Adopted on 23 August 2016]

² See Human Rights Council resolution 24/7, paras. 3 and 7.