

Bangladesh: Allegations of violence, intimidation and other interference with lawyer Rabindra Ghosh

25 November 2014

Introduction

Mr Rabindra Ghosh, advocate at the Supreme Court of Bangladesh and President of the non-governmental organisation Bangladesh Minority Watch, alleges acts of violence, intimidation and other interference with the discharge of his professional functions as a lawyer. These acts allegedly took place in connection with his work defending the rights of members of Bangladesh's minority communities.

In June 2014 the ICJ sent requests for further information to the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Home Affairs, and the President of the Bar Association and invited comments on the allegations. No response was received; in September 2014 the ICJ therefore wrote to the Prime Minister, but this letter has similarly gone unanswered.

Factual allegations¹

Rabindra Ghosh has claimed that he was physically attacked by a group of lawyers on 25 November 2013, while he was attending a client's bail hearing. He alleges that six lawyers hit him on the head and body, causing him to fall. Further injury was prevented only because other peers pulled him from the courtroom into the chambers of a presiding judge. Mr Ghosh says that police were called and an official complaint was recorded (technically, a General Diary Entry was made before the Officer-in-Charge to record a complaint and charges, see S. 44 of the Police Act, 1861).

Pursuant to the registration of the General Diary Entry, Rabindra Ghosh says he contacted the Deputy Commissioner and the Superintendent of the police, who advised him to contact the District and Session Judges. A District Judge reportedly subsequently informed Rabindra Ghosh that, as the altercation was between lawyers, he could not intervene in the matter. Rabindra Ghosh says he also contacted the Chairman of the National Human Rights Commission, as well as the Inspector-General of Police, but received no response.

Mr Ghosh also alleges that he was subjected to another attack on 14 January 2014, when he and other Bangladesh Minority Watch representatives apparently appeared before the Officer-in-Charge of a Police Station in Dinajpur, to discuss post-election violence against minority communities. Rabindra Ghosh was allegedly subjected to verbal abuse and threats by the Officer-in-Charge, and then pushed by subordinate police officers, who he says punched him in the face. Eventually, he was helped out of the room by another police officer. Rabindra Ghosh says he informed the Inspector-General of Police of what had happened. He says he also raised the matter with a District and Session Judge in the court of Dinajpur, as well as with the Deputy Commissioner and the Superintendent of Police of Dinajpur.

Rabindra Ghosh alleges that there has not been any substantive investigation or response from any of the institutions to which he has made complaints. As mentioned above, the ICJ has received no reply to its own communications with relevant officials in Bangladesh.

International standards

¹ Certain names, places and document numbers included in the allegations provided to ICJ have been omitted from this summary. They were however provided to the authorities in Bangladesh in the ICJ's letters.

Lawyers fulfil an essential role in protecting human rights and ensuring the fair and effective administration of justice. An independent legal profession that is able to advise and assist its clients on protecting their rights and interests is one of the pillars upon which respect for human rights and the rule of law rests.

Interference with, or a failure adequately to guarantee, lawyers' effective and independent discharge of their professional functions can constitute a violation of legal obligations to respect and protect human rights, including the rights to a fair trial and to liberty, guaranteed under treaties such as the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh has been a party since 2000. A failure of state authorities to adequately respond to threats or violence to a lawyer from private persons may not only constitute a violation of the individual's right to an effective remedy guaranteed under Article 2 of the ICCPR but also constitute a violation of for instance articles 6, 7 or 9 of the ICCPR (regarding right to life, freedom from torture or other cruel inhuman or degrading treatment, and right to liberty and security of person) – see for example Human Rights Committee, General Comment no 31 (2004), para 8.

International standards, including prominently the UN Basic Principles on the Role of Lawyers, set out criteria and conditions that must be satisfied in order for lawyers to be free to carry out their professional duties. In accordance with the Basic Principles, Governments are to "ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" (Principle 16(a)). Moreover, "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities" (Principle 17). Further, "[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions" (Principle 18).

Additional international standards address protections for human rights defenders, including lawyers who are acting on human rights matters. These affirm the duty of the State to protect such defenders from attacks, harassment and improper interference and to take all necessary measures to ensure the protection of such persons (see for example the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 12).

Accordingly, it is clear that State authorities must prevent attacks and harassment of lawyers and protect them by taking effective measures to ensure lawyers' security when they are discharging their functions. The authorities are also required to investigate any attacks that take place despite these measures and bring alleged perpetrators to justice when the attacks are criminal in character. As the UN Special Rapporteur on the independence of judges and lawyers has pointed out, "in the event of any harassment or physical assault against a lawyer, impartial and independent investigations must be made promptly". Such investigations are crucial not only to fulfil the state's obligations to the individual, but also "in order to prevent a reoccurrence of similar events" which is in turn important to more generally ensuring that individuals have effective access to lawyers able effectively to defend and uphold their rights (Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/68/181, para. 69).

Analysis

The Bangladeshi authorities appear to have failed their duty to ensure a prompt, thorough and independent investigation of the allegations that were made by Rabindra Ghosh, and to bring those responsible to justice should this investigation reveal that the facts warrant it. The absence of a credible investigation, in combination with an apparent lack of protection and lack of public condemnation of such attacks by the authorities, fosters an atmosphere of impunity that inhibits members of the legal profession from acting in the defence of human rights and the rule of law, or unpopular clients. The fact that authorities did not respond in any manner to the ICJ's own inquiries about the matter enhances the credibility of Mr Ghosh's allegations in this regard.

The apparent lack of a prompt, thorough and independent investigation also makes it difficult to reach final conclusions about the substantive allegations at this point. However, if the allegations were confirmed, Bangladesh's authorities would have failed their duty to abstain from any improper interference with the functioning of the legal profession. This relates to acts of violence and intimidation by officials (in relation to the alleged attack by police officers in a police station). They would also have failed their duty to provide the necessary security for lawyers so that they can fulfil their professional duties unhindered (in relation to the alleged attack by other lawyers in the court house).

The ICJ urges the authorities of Bangladesh to investigate the allegations made by Rabindra Ghosh. If the allegations are confirmed, those responsible must be held to account. Furthermore, effective measures must be taken, in consultation with the legal profession, to prevent the reoccurrence of such incidents in the future.

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