

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA
BGD 1/2016:

8 April 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 26/7 and 26/12.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the alleged imminent risk of execution of Mr. Motiur Rahman NIZAMI, following a trial that did not meet international standards of fair trial and due process.**

We are also drawing the attention of your Excellency's Government to two previous communications sent on 3 October 2012 (see A/HRC/22/67, case no. BGD 6/2012) and 16 November 2012 (see A/HRC/22/67, case no. BGD 8/2012), in which serious concerns were expressed regarding the independence and impartiality of both judges and prosecutorial services of the Bangladesh International Crimes Tribunal. In these communications concerns were expressed regarding serious allegations of unfair trial and lack of due process in the following cases before the International Crimes Tribunal: Mr. Delwar Hossain SAYEED; Mr. Salauddin Quader CHOWDHURY; Mr. Motiur Rahman NIZAMI; Mr. Ghulam AZAM; Mr. Muhammad KAMARUZZAMAN; Mr. Ali Ahsan Mohammad MUJAHID; Mr. Abdul Kader MOLLA; Mr. Mir Quasem ALI; and Mr. Islam AZHARUL. We thank your Excellency's Government for the reply received on 5 March 2013 to the communication BGD 8/2012. We regret that to date we have not received a substantive response from Your Excellency's Government to the communication BGD 6/2012.

According to the information received:

Mr. Motiur Rahman Nizami, aged 72, is the leader of Bangladeshi opposition party Jamaat-e-Islami political party Jamaat-e-Islami. On 29 June 2010, Mr. Nizami was arrested without warrant. On 28 May 2012, he was charged by the International Crimes Tribunal (ICT).

Mr. Nizami's trial and appeal processes reportedly failed to meet international standards on fair trial and due process. Some of the violations include: failure to safeguard fundamental rights such as the right to protection of the law and protection from ex post facto (retroactive) laws; selective application of domestic and international law; failure to properly define crimes and duplicitous charging; no right to appeal other than against conviction and sentence; lack of judicial and prosecutorial independence; failure to uphold the presumption of innocence; failure to be informed promptly and in detail in a language which the defendant understands of the nature and cause of the charges; failure to receive adequate time and facilities for the preparation of the defense and to communicate with counsel of his own choosing; failure to examine or have examined, the witnesses against the defendant; and preventing of cross examination of a witness on a previous inconsistent statement.

In October 2014, Mr. Nizami was sentenced to death by the International Crimes Tribunal (ICT) in Bangladesh. He was convicted of murder, rape and the mass killing of intellectuals during Bangladesh's War of Independence in 1971. On 6 January 2016, Mr. Nizami appealed the ICT's decision. The Appellate Division of the Supreme Court upheld his death sentence. On 6 March, the Supreme Court upheld the death sentence against Mr. Nizami. On 15 March the Supreme Court released the full verdict, giving Mr. Nizami the opportunity to lodge a petition for a review of its ruling. Should the Supreme Court reject his petition, Mr. Nizami faces imminent execution unless presidential clemency is sought and granted.

Death sentences by the International Crimes Tribunal can only be appealed once to the Appellate Division. This is in stark contrast with the process in place for appeals for death sentences imposed by other courts in Bangladesh, which can be appealed twice to the High Court Division and once to the Appellate Division of the Supreme Court. Prisoners convicted by ordinary courts and by the ICT whose death sentences have been confirmed have the right to petition the Supreme Court for a review of its ruling once the full verdict has been published.

The ICT has sentenced 17 individuals to death for crimes committed during Bangladesh's 1971 Independence war. In the past three years, four of those convicted by the ICT have been executed.

We express grave concern at the imminent execution of Mr. Motiur Rahman Nizami following judicial proceedings at the International Crimes Tribunal in Bangladesh

that may not have fulfilled the most stringent guarantees of fair trial and due process for the imposition of the death penalty.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, **we call upon your Excellency's Government as a matter of urgency to take all necessary measures to halt the execution of Mr. Motiur Rahman Nizami**, which on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. **We further urge you to ensure that Mr. Nizami's death sentence is annulled and that he is re-tried in compliance with international standards.**

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fact that the above allegations appear to be in contravention of the rights to life and security and not to be arbitrarily deprived of life, as set forth in articles Article 3 of the UDHR and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh acceded to on 6 September 2000. These allegations also seem to be in contravention of the right to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.

We would also like to recall that article 6.2 of the ICCPR provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court. Moreover, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that capital punishment may only be carried out following a legal process which gives all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Furthermore, article 6.4 of ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the death sentence may be granted in all cases.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

It is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your observations on any additional information and any comment you may have on the above mentioned allegations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions