

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA
BGD 8/2015:

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 26/7, 26/12, and 25/13.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **alleged imminent execution of Mr. Salauddin Quader Chowdhury and Mr. Ali Ahsan Mohammad Mujahid following trials 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 (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: Messrs. Delawar Hossain Sayedee, Salauddin Quader Chowdhury, Motiur Rahman Nizami, Ghulam Azam, Muhammad Kamaruzzaman, Ali Ahsan Mohammad Mujahid, Abdul Kader Molla, Mir Quasem Ali, and 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.

Mr. Salauddin Quader Chowdhury was also the subject of a previous joint urgent appeal sent on 21 February 2011 (see A/HRC/18/51, case no. BGD 2/2011) by the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In this letter, the experts expressed serious concerns regarding the physical and mental integrity of Mr. Chowdhury after his arrest, as well as failure to investigate allegations of torture while in prison. A reply was received from your Excellency's Government to this letter on 14 May 2012.

According to the new information received:

In 2013 Mr. Ali Ahsan Mohammad Mujahid and Mr. Salauddin Quader Chowdhury were sentenced to death by the International Crimes Tribunal of Bangladesh (ICT) on charges of war crimes and genocide. The judgments were appealed to the Appellate Division of the Supreme Court of Bangladesh. In June and July 2015, the convictions and sentences against Mr. Muhajid's and Mr. Chowdhury were, respectively, upheld by the Appellate Division of the Supreme Court.

Mr. Muhajid's and Mr. Chowdhury's trial and appeal processes failed to meet international standards on fair trial and due process. Some of the violations include: selective application of domestic and international law; failure to properly define crimes; duplicitous modes of liability; removal of rules of evidence and disclosure; unclear definition of the burden and standard of proof; inadequate and disproportionate time for defence investigations; interrogations conducted in absence of defence counsel; lack of judicial independence; transfer of judges to another chamber midway through the trial; no right to challenge the jurisdiction of the tribunal or the appointment of judges; statements by the judiciary contrary to the presumption of innocence; witness interference and disappearance; falsifying of witness testimony; and judicial and prosecutorial misconduct.

Reports also indicate that Mr. Chowdhury defence was denied the right to call alibi witnesses to testify that he was away from the country when the crime he is accused of took place. Despite allowing the Prosecutor to call 41 witnesses, the Tribunal restricted Mr. Chowdhury's defence to four witnesses, excluded others and refused to consider affidavits from the excluded witnesses. The Appellate Division also rejected affidavits and live testimony from the witnesses.

There were also allegations of political interference within the trial process and instances of attempts to pervert the course of justice.

Mr. Mujahid's and Mr. Chowdhury's review application were heard, respectively, on 17 and 18 November 2015. Both reviews were summarily rejected after a short hearing. The Supreme Court did not give any reasons for the rejection and noted it will not give any written orders. The Supreme Court subsequently signed the death sentence verdicts. It is expected that the verdicts will be delivered to the prison authorities imminently to start the process for carrying out the executions. As the review applications were effectively the last appeal there is no further available recourse to overturn the death sentences other than a presidential pardon. However, Government authorities have stated that they will reject any pardon or commutation of sentence for 'war criminals'. They further recently noted that they are committed to carrying out the executions promptly. The latter statement was made even before the Supreme Court rejection of the review applications.

Grave concern is expressed at the allegations that the death penalty may be carried out against Mr. Ali Ahsan Mohammad Mujahid and Mr. Salauddin Quader Chowdhury following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial and due process.

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 to take all necessary measures, including granting pardon, to halt the executions of Mr. Ali Ahsan Mohammad Mujahid and Mr. Salauddin Quader Chowdhury**, which on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. **We also urge you to ensure that their death sentences are annulled and that they are re-tried in compliance with international standards.**

Without making any judgment as to the accuracy of the information made available to us, the above alleged facts indicate a prima facie violation of the right of every individual to life and security and not to be arbitrarily deprived of his life, as set forth in articles 3 of the Universal Declaration of Human Rights (UDHR) and 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that 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 article 14 of the ICCPR and article 10 of the UDHR.

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 pursuant to a final judgment rendered by a competent court after a legal process which

gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR. 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 and that amnesty, pardon or commutation of the sentence of death 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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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. We would further appreciate receiving updated information on the current situation of the above mentioned individuals.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

Juan E. Méndez
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