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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of 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

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 6/4, 8/6, 15/22, and 8/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of **Mr. Salauddin Quader Chowdhury** (aged 63), a Member of Parliament from the opposition Bangladesh National Party (BNP).

According to the information received:

In the early hours of 16 December 2010, Mr. Chowdhury was arrested by the security forces of Rapid Action Battalion, Detective Branch police, and the Directorate-General Foreign Intelligence at his apartment in Benani neighbourhood in Dhaka, Bangladesh. It is reported that the arrest was linked to an incident in June where a car was set on fire in Dhaka, killing a passenger. Reportedly, Mr. Chowdhury has not been charged, nor has he had access to a lawyer since his arrest and was only allowed to meet his relatives for the first time on 22 December 2010.

It is further reported that following his arrest on 16 December 2010, Mr. Chowdhury was subjected to torture by the Bangladeshi security forces during interrogation at a private residence, with a physician accompanying them. Mr. Chowdhury was reportedly tortured for several hours, including by applying electrodes to his genitals, beating him, slitting his stomach with razors and

twisting his toenails and fingernails with pliers. It is further reported that Mr. Chowdhury was repeatedly revived after falling unconscious during the ordeal. Only when his condition further deteriorated under interrogation, was he taken to the Bangabandhu Medical Hospital for treatment (at 7:30 a.m. in the morning of 16 December 2010). Reportedly, video footage taken in the hospital grounds showed Mr. Chowdhury as weak, in pain, unable to walk on his own and with an apparent blood stain on his shirt. After an hour in the hospital, Mr. Chowdhury was reportedly taken to the headquarters of the Detective Branch of the Police, where he was again subjected to torture, including by further electrocution. It is alleged that when Mr. Chowdhury was first visited by his relatives on 22 December 2010, he was in a critical health condition, his genitals and nose were still bleeding three days after the most recent electrocution, and there were cut marks on his stomach and bruises all over his body.

The arrest and alleged torture of Mr. Chowdhury had been widely reported in the local media. Following several media inquiries, the Inspector General of Police reportedly denied that Mr. Chowdhury had been tortured and informed the media that on the morning of 16 December 2010, he was taken to hospital to be treated for an asthma condition.

It is further reported that Mr. Chowdhury was likely to undergo additional interrogation by the police following the charges of involvement in crimes against humanity and a subsequent arrest warrant brought against him on 19 December 2010, by Bangladesh's International Crimes Tribunal, which had been set up to try crimes committed during the 1971 war of independence. On 22 December 2010, following the Court order, Mr. Chowdhury was reportedly placed in Dhaka Central Prison pending proceedings in both the June and the 1971 cases. It is reported that Mr. Chowdhury was not present at the Court hearing and had not been allowed to meet his lawyers. He had reportedly been kept in the holding cell downstairs and was later transferred to a remote prison outside Dhaka.

Despite the reported deterioration in his health, Mr. Chowdhury has since his arrest reportedly been denied access to independent, specialized medical treatment. Moreover, the Government has reportedly actively sought, through the courts, to ensure that such access is denied. Reportedly, on 2 January 2011, in response to Mr. Chowdhury's wife's petition to the High Court Division of the Supreme Court seeking admission to a cardiac hospital for independent medical treatment, the High Court Division ordered on 3 January 2011, that Mr. Chowdhury be given access to medical treatment within two days. However, following an appeal by the Government, the Appellate Division of the Supreme Court stayed the order for six weeks on 4 January 2011.

It is further reported that on 5 February 2011, upon arrival in Kashipur Central Jail where Mr. Chowdhury was being detained, Mr. Chowdhury's relatives were told that he was unwell and physically unable to see them. Only when the ambulance arrived to take Mr. Chowdhury to hospital, was the family able to see him. It is claimed that Mr. Chowdhury's health severely deteriorated while in Kashipur Central Jail, and may have had a stroke. It is alleged that Mr. Chowdhury was taken to the Government Bangubandhu Sheikh Mujib Medical University Hospital, but that he refused to be treated there and claimed to have recognised the doctors who have participated in reviving him after he was repeatedly tortured in December 2010. It is reported that Mr. Chowdhury was taken back to prison and possibly put into solitary confinement.

It is also reported that on 6 February 2011, the family members were not allowed to see Mr. Chowdhury in Kashipur Central Jail and were told by the prison guard that the visiting hours were over and that they should try to come back another day. In an attempt to visit Mr. Chowdhury on 8 February 2011, the family members and Mr. Chowdhury's lawyer were told by the prison doctor that Mr. Chowdhury refused to meet them as he was weak and physically unable to walk.

Serious concern is expressed about the physical and mental integrity of Mr. Chowdhury in view of his deteriorating health condition. Further concern is expressed about the allegations according to which Mr. Chowdhury has not been provided with an independent medical examination or treatment. Finally, concern is expressed about the failure to investigate allegations of torture to which Mr. Chowdhury has reportedly been subjected while in the prison.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. Chowdhury.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the Mr. Chowdhury is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Chowdhury. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth, *inter alia*, in the Universal

Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

Moreover, we would like to draw your Excellency's Government's attention to article 12 of the Convention against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention against Torture, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

Furthermore, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers". Furthermore, rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

In this respect we would highly appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of Mr. Chowdhury. This right is

enshrined, inter alia, in the article 12 of the International Covenant of Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Covenant was acceded by your Government on 5 October 1998, and it includes an obligation to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

We also wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health service. (E/C.12/2000/4, Art. 12 (para. 34)).

We would also like to draw your Excellency's Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged". (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

Furthermore, we would like to draw your Excellency's Government's attention to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]". We would also like to draw your Excellency's Government's attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

With regard to the allegations that Mr. Chowdhury did not have access to his lawyer upon arrest, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. In particular, principle 5 states that Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence. In addition, principle 7 stipulates that Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to

a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

In respect of the allegations that the authorities have sought, through the courts, to ensure that access to medical assistance was denied, we would like to refer Your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, principle 1 states that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. Principle 4 further stipulates that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Concerning the allegations according to which Mr. Chowdhury did not have access to his lawyers and was not present at his trial, we would like to refer your Excellency's Government to article 14 3) of the ICCPR, acceded to by your Government, which states that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees...: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Chowdhury are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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 Mr. Chowdhury in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates 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 cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please indicate what measures are being taken to provide Mr. Chowdhury with independent and adequate medical treatment? What measures are being taken to ensure the right to health of Mr. Chowdhury?
4. What measures are being taken to ensure the enjoyment of the right to the highest attainable standard of health of detainees?
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please indicate which measures were taken to ensure Mr. Chowdhury's rights to legal representation, to be informed of the criminal charges against him and to have access to a lawyer.
8. Please indicate whether Mr. Chowdhury was tried in his absence. If so, please explain why and indicate which legal remedies were made available to him.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow

9. Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Anand Grover
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