

Mandates of the Working Group on Enforced or Involuntary Disappearances; 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

REFERENCE:
UA BGD 6/2016

28 October 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 27/1, 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the abduction of lawyer Ahmad Bin Quasem, which seems to be directly related to his work as part of the legal defence team that represented Mr. Mir Quasem Ali before the International Crimes Tribunal.

Mr. Mir Quasem Ali was Mr. Ahmad Bin Quasem's father. The International Crimes Tribunal sentenced Mr. Mir Quasem Ali to death on 2 November 2014, a ruling which was upheld by the Appellate Division of the Supreme Court on 8 March 2016. He was executed on 3 September 2016. Mr. Mir Quasem Ali was the subject of four urgent appeals sent on 29 July 2016 (case no. BGD 5/2016); 22 March 2013 (case no. BGD 5/2013, A/HRC/24/21); 16 November 2012 (case. no. BGD 8/2012, A/HRC/22/67); and 3 October 2012 (case no. BGD 6/2012, A/HRC/22/67). We thank your Excellency's Government for the replies received to cases BGD 6/2012 and BGD 8/2012. We regret that to date we have not received responses to cases BGD 5/2013 and BGD 5/2016.

Mr. Mir Quasem Ali was also the subject of opinion No. 66/2012 (A/HRC/2012/66) of the Working Group on Arbitrary Detention, where the Working Group considered his detention to be in breach of article 9 of the International Covenant on Civil and Political Rights.

Concern regarding Mr. Bin Quasem's abduction was already expressed by the Special Rapporteurs on extrajudicial, summary or arbitrary executions; independence of judges and lawyers; torture and other cruel, inhuman or degrading treatment or punishment; as well as the Working Groups on Arbitrary Detention and Enforced or Involuntary Disappearances in a joint press release issued on 23 August 2016.

According to the information received:

Mr. Ahmad Bin Quasem was part of the legal team representing his father, Mr. Mir Quasem Ali, who was sentenced to death by the International Crimes Tribunal on 2 November 2014 for crimes against humanity, and was executed on 3 September 2016 after the Supreme Court confirmed his conviction and sentence.

At around 11pm on 9 August 2016, Mr. Ahmad Bin Quasem was abducted from his home in Dhaka by men in plainclothes, allegedly Government security forces. No reason for his apprehension was given and no arrest warrant shown.

At around 2am on 10 August 2016, Mr. Ahmad Bin Quasem's wife together with his sister attempted to report the abduction to the police at Pollabi Police station in Dhaka. The inspector present at the moment refused to receive any official complaint stating that the issue was too sensitive to be taken. They returned later in the morning, this time with a lawyer, and met the Officer in Charge. Although he listened to them and took note, he told them they should come back later that day to make an official complaint. Finally, in the evening of the same day, they were given an official complaint register number (GD no. 808, Pollabi Police station).

No acknowledgement by Bangladeshi authorities of Mr. Ahmad Bin Quasem's arrest has been made so far, nor have any details of his fate and whereabouts or any on-going investigations regarding his abduction been provided to his family. There is strong indication that Mr. Ahmad Bin Quasem may have been abducted to prevent him from taking part in a review hearing scheduled before the Supreme Court on 24 August 2016 and part of the appeal process on behalf of his father, as well as to prevent him from speaking to international contacts before the execution.

Grave concern is expressed about the abduction of Mr. Ahmad Bin Quasem and his physical and psychological integrity as his fate and whereabouts are currently unknown, a situation which places him at great risk of torture and other ill-treatment. Further serious concern is expressed about the apparent lack of due-diligence of the Bangladeshi authorities in investigating Mr. Quasem's abduction, which could qualify as an enforced disappearance should the involvement of security forces be confirmed. Finally, we are deeply concerned that the abduction of Mr. Ahmad Bin Quasem may be directly related to his work as a lawyer and member of the legal defence team of Mr. Mir Quasem Ali.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The allegations mentioned above seem to contravene article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government in 1979, which enshrines the rights of liberty and security of person. This provision, as recalled by the Human Rights Committee in its General Comment No. 35, involves an obligation on States Parties to respect the liberty and security of individuals under their jurisdiction, but also to take appropriate measures to protect them against abduction or detention by third parties, including individual criminals or irregular groups (see CCPR/C/GC/35, para. 7).

We would also like to refer to Article 13 (3) of the Declaration on the Protection of all Persons from Enforced Disappearance, which states that "Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal".

In its resolution 7/12, the Human Rights Council also urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected. The protection of families of disappeared persons should be carried out regardless of the existence of criminal investigation.

Likewise, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in Article 7 of the ICCPR and Articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by your Excellency's Government in 1998. In its General Comment No. 20, the Human Rights Committee recalled that States have the duty to protect both the dignity and the physical and mental integrity of the individual against any kind of ill-treatment, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. We would also like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, reminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

Finally, we would like to recall that, as stipulated in the UN Basic Principles on the Role of Lawyers, Governments have the duty to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to safeguard the security of lawyers where it is threatened (Principles 16 and 17). The Basic Principle also underline that lawyers should not be identified with their clients or their clients' causes (Principle 18).

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 in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information relative to the measures taken to ensure the physical and psychological integrity and wellbeing of Mr. Ahmad Bin Quasem.
3. Please provide detailed information about any investigation on the abduction of Mr. Ahmad Bin Quasem; if no investigation was undertaken, please explain why.
4. If Mr. Ahmad Bin Quasem were to be in custody of Bangladeshi security forces, please provide urgent information on his whereabouts and the legal ground for his detention.
5. Please provide information regarding the measures adopted by your Excellency's Government to ensure the free and independent exercise of the legal profession in Bangladesh.

While awaiting a reply, we urge your Excellency's Government to take all necessary measures to guarantee the liberty and security of Mr. Ahmad Bin Quasem. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of such acts and to guarantee the safety and independence of lawyers in Bangladesh.

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.

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Juan Ernesto Mendez
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