Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL BGD 1/2020

22 January 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In this connection, I would like to bring to the attention of your Excellency’s Government information I have received concerning Mohammad Shah Jalal, grocer, who allegedly had his eyes gouged out while in police custody and the lack of an independent and impartial investigation into the matter.

According to the information received:

On 18 July 2017 at round 6.30 p.m., Mr. Mohammad Shah Jalal, a national of Bangladesh born on 26 June 1982, was arrested by Khalishpur police when he went out to buy supplies for his family, from a shop near his house at Noyabati rail line at Khalishpur in Khulna, Bangladesh.

Mr. Shah Jalal was detained in a cell of the Khalishpur Police Station. Around 9.00 p.m., his wife, Rahela Begum, was informed of her husband’s arrest and detention in Khalishpur Police Station and went to the police station where the police allegedly demanded a bribe of one hundred fifty thousand Taka (USD 1860), which Mr. Shah Jalal’s family could not afford and she was denied to see her husband to bring him some food.

Around 11.30 p.m. a number of police officers reportedly tied up his legs and blindfolded him and drove him around in a van through the streets of Khulna for about 2 hours before pulling over on the side of a road and then putting a metallic rod into both of Mr. Shah Jalal’s eyes and gouging them out.

In the early hours of 18 July 2017, the police left Mr. Shah Jalal at the Khulna Medical College Hospital and claimed that a group of local residents had gouged his eyes out over his alleged involvement in a mugging.

Mr. Shal Jalal’s family was informed that he had been admitted to hospital and on July 19, he was referred to Dhaka Medical College Hospital where a doctor confirmed that his eyes had been gouged with something sharp and metallic. Later, an operation was conducted in the Dhaka Medical College Hospital but vision could not be restored to either eye.

On 29 July 2017 Mr. Shah Jalal was charged with one count of mugging.
On 7 September 2017, Mr. Shah Jalal’s mother, Renu Begum, filed Criminal Report case (case# 309/17) with Khulna Metropolitan Magistrate Court under sections 364/385/386/326/307/34 of the Penal Code along with sections 13/15 of the Torture and Custodial Death (Prevention) Act, accusing 11 police officers from Khalishpur Police Station. The court ordered the Police Bureau of Investigation (PBI) on 24 September 2017 to investigate the matter.

On 5 January 2018, Investigating Officer Inspector Bablur Rahman Khan, of the PBI, submitted an investigation report to the Chief Metropolitan Magistrate Court Khulna stating he did not find any validity in the allegations against the police officers and dismissed the case.

On 15 February 2018, Mr. Shah Jalal’s wife, Renu Begum, filed a Naraji petition against PBI’s investigation report. On 25 February 2018, Khulna Metropolitan Magistrate Shahidul Isla ordered the Deputy Commissioner of the Detective Branch (DB) of the Khulna Metropolitan Police to re-investigate this incident.

However, on 30 April 2018, this case (Case No. 309, Khalishpur) was withdrawn from the Chief Metropolitan Magistrate's Court in Khulna without explanation.

In response, the family filed for a Criminal Revision (Case No. 207) of the case with the court in Khulna on 16 September 2018. However, the court dismissed this Revision.

On 28 July 2019, Mr. Shah Jalal’s wife filed a Writ Petition (Criminal Misc Case No. 47977 of 2019) in the High Court Division of the Supreme Court to quash the lower court’s decision not to review this case.

On 4 November 2019, the Khulna Metropolitan Magistrate’s court convicted and sentenced Mr. Shah Jalal to two-years and a fine of (Tk. 5000).

Without prejudging the accuracy of the information made available to me, I would like to express grave concern at the reported torture and mutilation of Mr. Shah Jalal, which resulted in his complete and permanent loss of vision in both eyes and severe psychological trauma from the assault. Should these allegations prove to be true, they would constitute grave human rights violations in contravention of the Convention Against Torture. Serious concern is further expressed at the reported lack of serious investigation, prosecution and criminal accountability of the alleged perpetrators and their superiors, especially in light of the particular cruelty and malice of the alleged offence on the part of officers acting under the colour of law.

While I welcome the initial opening of an investigation into the allegations of torture against Mr. Shah Jalal, I urge your Excellency’s Government to conduct an investigation in an impartial and independent manner, as required by international law, and in accordance with the guidelines laid out in the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).
In connection with the above alleged facts and concerns, please refer to the Annex on Reference to international human rights law attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information on the factual and legal grounds for the arrest and detention of Mr. Shah Jalal and detailed information as to how his arrest is compatible with the obligations of your Excellency Government under international human rights norms and standards, in particular with the ICCPR and the CAT.

3. Please provide an update on the current status and a detailed explanation of the reasons why an investigation and judicial or other inquiries carried out in relation to the reported allegations of torture have not resulted in a prosecution.

4. Please explain what investigation, if any, has been undertaken regarding the allegations of bribery or corruption by officials at the Khalishpur and Khulna Metropolitan police stations and the judicial authorities involved in this case.

As a standard course of action for letters of allegations, this communication and any response received from your Excellency’s Government will be made public via the communications reporting website after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

However, given the gruesome nature of the issues raised by these allegations, I would appreciate receiving a response at your earliest convenience. For the same reason, I may consider to publicly expressing my concerns in this case as the information received, if confirmed, indicates a matter warranting urgent attention on the part of the relevant authorities. I believe indeed that the wider public should be informed about the implications for the protection of human rights of these allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I 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.

I would like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Bangladesh ratified on 5 October 1998.

In this context, I would like to draw the attention of your Excellency’s Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), 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 CAT, which requires State parties to prosecute suspected perpetrators of torture.

Further, article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is a party (ratified on 6 September 2000), provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” I would also like to draw the attention of your Excellency’s Government to paragraph 14 of General Comment No. 20 of the Human Rights Committee, which provides that, “Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective”.

In addition, I would like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, 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 and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.” and “(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation”.

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Finally, I refer to the United Nations Convention Against Corruption, which Bangladesh ratified on 27 Feb 2007, and draw your attention to my thematic report (A/HRC/40/59) on the interrelationship between torture and corruption. At para 70, I recommend that “States should adopt and implement strict policies of zero tolerance for both corruption and torture or ill-treatment throughout all branches and levels of public authority, not only through strict enforcement at the level of individual officials, services and processes, but also through decisive corrective action that may be required at the systemic level. In doing so, States should duly consider the predominant patterns of causal interaction between corruption and torture or ill-treatment. Furthermore, States should complement repressive and corrective action with proactive efforts to ensure adequate funding, training and equipping of public services and institutions, and fostering a general culture of personal and professional integrity throughout all public services.”