

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
UA BGD 2/2020

3 April 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 34/18, 36/6 and 35/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged enforced disappearance of journalist Shafiqul Islam Kajol, the undue delay by the authorities to initiate investigations into the disappearance, and the opening of investigations against him for offences under the Digital Security Act.

According to the information received:

Mr. Shafiqul Islam Kajol is a journalist at the Manabzamin newspaper in Bangladesh. On 2 March 2020, the newspaper published an article which reported that various members of parliament had visited a sex trafficking ring operated out of a hotel in Dhaka by a member of the governing political party in Bangladesh. No names were identified in the story, but the names of the individuals contained in an unverified list later surfaced through social media.

On 9 March 2020, police opened investigations against Mr. Shafiqul Islam Kajol after a member of parliament and the governing party filed a complaint against him and other journalists to the police. The complaint concerned spreading false information and circulating it on social media in violation of the Digital Security Act. Under section 25 of the Digital Security Act, knowingly publishing or disseminating false information with the intention to annoy, insult, humiliate or denigrate a person is punishable with up to 3 years imprisonment and/or a fine amounting to a maximum equivalent to over 3000 USD.

On 10 March, unidentified individuals approached and apparently tampered with Mr. Shafiqul Islam Kajol's motorbike, which was parked outside his office building. Later that same day, Mr Shafiqul Islam Kajol left work on his motorbike. This was the last time anyone heard from him. His mobile phones

were reportedly switched off around the time of his disappearance, and his motorbike has not since been found.

On 11 March 2020, persons associated with Mr Shafiqul Islam Kajol filed a complaint with the police regarding his disappearance. Police authorities registered the complaint and denied that he was in custody of the police. Despite requests, the authorities did not open an investigation until 18 March 2020, when an order from the High Court demanded that they do so.

Without prejudice to the facts of the case, we express our serious concern at the alleged enforced disappearance of journalist Shafiqul Islam Kajol. Due to the timeline of the events, we further express our concern that the disappearance is connected to his journalistic activities. More generally, we are concerned that the present case highlights the restrictive conditions that exist more generally for the exercise of independent and investigative journalism and the expression of dissent in Bangladesh.

In this regard, we refer to the International Covenant on Civil and Political Rights, which Bangladesh acceded to on 6 September 2000. As recognised by the Human Rights Committee, enforced disappearances constitute an interference in the right to life of individuals, and constitutes a violation of the right to life by the State. In all circumstances, the State has a positive obligation to take adequate measures to prevent disappearances, (see General Comment no. 36 on the right to life para 58)

In situations where there is a suspected disappearance, the authorities are under a duty to conduct “effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance”, *id.* In this regard, we express serious concerns at the delay in initiating investigations until the High Court ruling on 18 March 2020.

In addition to a potential violation of the right to life, the enforced disappearance of individuals for exercising their freedom of expression is contrary to article 19 of the Covenant (General Comment no. 34 on the right to freedom of opinion and expression, para 23). Any such attacks must be vigorously investigated (*id.*). Impunity in cases of attacks against journalists not only restricts the freedom of expression of the victim, but creates a chilling effect more generally on the exercise of the freedom of expression and on investigative journalism. In this regard, we reiterate that a free and unhindered press is a cornerstone of democratic society (*id.* para. 13). The imposition of punitive measures of journalists critical of the government or of public figures is incompatible with article 19 of the ICCPR (*id.* paras. 38 and 42).

We therefore regret that investigations were opened by the police for the news report published on 2 March, for violations of the Digital Security Act. In this regard, we refer to the concerns previously expressed by the Special Rapporteur on freedom of

expression (OL BGD 4/2018), on the detrimental effects of the Digital Security Act on freedom of expression in Bangladesh. We remind that the prohibition on spreading “false” information is too vague to comply with the requirements of article 19 (3) of the Covenant. To the extent that the prohibition in section 25 of the Digital Security Act constitutes a prohibition on defamation, it should be decriminalised. Imprisonment for the offence is never compatible with Covenant (General Comment no. 34 on the right to freedom of opinion and expression, para. 47). In conformity with article 2 (1) and 2 (3) of the Covenant, the State must cease any ongoing violations and make legislative amendments to the Digital Security Act as necessary to give full effect to the rights of the ICCPR (see, generally, General Comment no. 31).

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 information on the fate and whereabouts of Mr. Shafiqul Islam Kajol.
2. Please provide any additional information and any comment you may have on the above-mentioned allegations.
3. Please provide information on the reasons for the delay in initiating investigations into his disappearance after a complaint was made to the police on 11 March 2020.
4. Please provide information on the steps taken to ensure prompt, effective and impartial investigation of the disappearance.
5. Please provide information on the steps taken to ensure the closure of investigations for the offences under the Digital Security Act.
6. Please provide information on the steps taken to amend the Digital Security act in conformity with the obligations of Bangladesh under international law.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that this case will also be considered by the Working Group on Enforced or Involuntary Disappearance according to its methods of work, and your Excellency's Government will be informed by a separate correspondence.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions