

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
AL BGD 3/2020

10 June 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 34/19, 42/22, 34/18 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention, torture and ill-treatment of Mr. **Ariful Islam**.

Mr. Islam is a district correspondent of Dhaka Tribune (Bangladeshi English news daily) and Bangla Tribune (Bangladeshi Bangla news online portal). His journalistic work has exposed irregularities and corruption in law enforcement.

According to the information received:

In the early hours of 14 March 2020, a raid was conducted on the home of Mr. Ariful Islam by the Bangladesh Ansar, a paramilitary auxiliary force responsible for the preservation of internal security and law enforcement in the country, and individuals in plain clothes. Mr. Islam's home was forcefully broken into; he was beaten up and taken to the District Commissioner's Office (DCO) in Kurigram where he was held in a room. Mr. Islam was stripped, blindfolded and beaten repeatedly while being filmed. He was threatened with death as he was told he would be shot in an "encounter". This is not the first time Mr. Islam has been subject to abuse by police, having previously been subjected to threats for reporting on corruption matters involving the DCO and financial irregularities in the district administration.

At 2 am, a mobile court, already set up outside of the DCO sentenced Mr. Islam to one year imprisonment for alleged possession of half a bottle of alcohol and 150 grams of contraband drug marijuana. He was also fined 50,000 BDT.

The next day, on 15 March, a writ was filed by a lawyer on behalf of Dhaka Tribune to the High Court Division under article 102 of the Constitution against the mobile court's conviction, disputing the legality of the raid of Mr. Islam's

home and his subsequent arrest and sentencing. The High Court bench ordered the State to submit before it a copy of the conviction and sentence, issued by the mobile court against Mr. Islam.

According to the Mobile Court Act, the power and jurisdiction of the executive magistrates is restricted to catching the offender in *flagrante delicto*. Section 6 (3), (4) and (5) of the Act provides that if the offence is not described in the schedule or if it is more grievous in nature, then the matter would be referred to the formal court and the mobile court will have no authority to try the offence under this law. In accordance with Section 7(1), the mobile court is not competent to sentence a person in the absence of a confession to the offence. The mobile court must then refer the matter to a court of competent jurisdiction for trial.

On 23 March, the High Court Division of the Supreme Court of Bangladesh stayed the Mobile Court's proceedings for six months.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern about what appears to be the persecution of Mr. Islam for the peaceful exercise of his profession as a journalist. We are concerned that on this ground he was arrested, intimidated, subjected to beatings and other acts of violence by Government security personnel, and sentenced after an accelerated trial before a mobile court that does not seem to meet basic fair trial and due process guarantees. Of particular concern are the allegations that he was tortured and ill-treated while in detention, and that he was convicted despite irregularities regarding the jurisdiction of the mobile court.

Should these allegations be confirmed, they would be in contravention of his right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, his rights to liberty and security of person, his right to fair and public hearing by a competent, independent and impartial tribunal, and his right to freedom of opinion and expression, as set forth in articles 7, 9, 10, 14, 17, 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh acceded to on 6 September 2000. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Bangladesh acceded to on 5 October 1998.

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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual basis for the alleged arrest, detention and charges against the Mr. Islam and explain how they conform to the international human rights obligations of Bangladesh under the conventions it has ratified, notably ICCPR and CAT.
3. Please explain why the home of Mr. Islam was broken into by Ansar security personnel, and why he was allegedly beaten upon arrest. Did the Ansar officers produce an arrest warrant and explained he reason why he was taken away?
4. Please provide information about the mobile court trial and the evidentiary basis of the findings for the conviction and explain how they conform to international human rights standards.
5. Please provide detailed information on any investigations which have been undertaken with regards to the alleged acts of torture and ill-treatment detailed above. Please also explain what steps have been taken in order to bring the perpetrators to justice. If no investigation has taken place, please explain the reasons for this, and how this is consistent with the international human rights obligations of Bangladesh.
6. Please provide information about measures taken to ensure that the legal framework in Bangladesh ensures the rights of journalists and others professionals involved in media work to freely exercise their profession without fear for their life, freedom, personal security and integrity; and what measures have been taken to ensure that all attacks against journalists are subject to effective investigations.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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(s) responsible for the alleged violations.

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

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

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

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

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is codified in the following international instruments: article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and articles 7, 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh acceded to on 6 September 2000.

We would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture".

Article 9 of the ICCPR guarantees the right to liberty and security of person. It further states that anyone detained or arrested on a criminal charge shall be promptly informed of any charges against him, and brought promptly before a judge or other officer authorized by law to exercise judicial power. In particular article 9 (4) states that, "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

We recall article 14 of the ICCPR, which provides that in the determination of any criminal charge, everyone shall be entitled to the minimum guarantees of fair trial and due process, including to have adequate time and facilities for the preparation of his defence, to be assisted by and to communicate with a lawyer of his own choosing, as also established by the UN Basic Principles on the Role of Lawyers.

We recall article 19 of the ICCPR, which protects the right to freedom of opinion and expression. It grants the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. As indicated by the Human Rights Committee:

"States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.<sup>44</sup> Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression,

including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.<sup>45</sup> Journalists are frequently subjected to such threats, intimidation and attacks because of their activities.<sup>46</sup> So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers.<sup>47</sup> All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted,<sup>48</sup> and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.” (CCPR/C/GC/34 para. 23) Moreover, the Committee has clarified that “[t]he penalization of a [...]journalist solely for being critical of the government [or public authorities] can never be considered to be a necessary restriction of freedom of expression” (*id.* para. 42).