

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
AL BGD 4/2020

1 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/18, 42/22, 37/12 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of Mr. **Shariat Boyati**, a singer of the popular Baul folk music community in Bangladesh.

According to the information received:

On 24 December 2019, Mr. Boyati went to a Baul song concert in Dhaka, where he made remarks about Islam, including stating that music is not forbidden in the Qur'an and criticizing some fundamentalist scholars for fabricating and misrepresenting the philosophy of the religion. His remarks were later uploaded on YouTube.

Soon after the video clip went viral via YouTube and different social media sites, enraged locals and pro-Islamic groups staged protests and held processions throughout Tangail demanding punishment for Mr. Boyati. On 9 January 2020, a Muslim cleric of Agdholla village filed a case against Mr. Boyati at the Mirzapur Police Station alleging that his statements had hurt religious sentiments.

On 11 January 2020, police arrested Mr. Boyati for his comments and charged him with "hurting religious sentiments", under section 28(2) of the Digital Security Act (DSA) 2018. No warrant was handed to Mr. Boyati, in accordance with the provisions of the 2018 DSA.

On 29 January 2020, the Tangail court rejected Mr. Boyati's bail petition, stating that the DSA prohibits bail for such charges.

On 5 March 2020, the lawyer of Mr. Boyati appeared before the High Court and requested an upgrade of the case in the daily cause list for the 'Bail Petition and Government Reply hearing'. Mr. Boyati's lawyer had reportedly faced some intentional delays from the local administration before being able to move the bail petition to High Court. However, the High Court rejected the request made by Mr. Boyati's lawyer.

It is reported that on the date this communication is sent, Mr. Boyati is still in detention, facing up to five years' imprisonment and/or a fine of up to 10 million takas (\$117,000 USD).

Further, it is reported that Mr. Boyati's children have been prevented from attending school as a result of allegations of threats against the family, and that the local Imam has decided to exclude Mr. Boyati's family from all social events.

Reportedly, several other artists are facing prosecution for allegedly hurting religious sentiments, under the 2018 Digital Security Act. It is reported that about four hundred cases were filed in the first year after the Act came into effect. Many of them are said to have requested bail, but they are still in detention at heightened risk of contracting COVID-19.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the alleged arbitrary detention of Mr. Boyati in response to the exercise of his human right to freedom of expression and cultural rights.

The charges against Mr. Boyati under the 2018 Digital Security Act appear to violate his rights to freedom of thought, conscience and religion or belief, freedom of opinion and expression and cultural rights. Criminalizing his statements cannot be justified as proportional or necessary under articles 18 and 19(3) of the ICCPR.

We have previously raised our concerns about the 2018 Digital Security Act (BGD 4/2018), which criminalizes large categories of speech for harming "religious sentiments." We are concerned that various sections of the Act (sections 25, 28, and 31) criminalize speech in vague and broad terms, which may allow for broad and unpredictable interpretations that could criminalize nearly all forms of legitimate expression. The criminal penalties under the Act, particularly the possibility of custodial sentences, significantly outweigh the gravity of the underlying act, and may operate as a significant deterrent on individuals' ability to exercise their right to freedom of expression. We are notably concerned that according to reports we received, hundreds of cases were filed against different individuals in the first months after the Act came into effect.

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 information about the factual and legal grounds for the arrest and detention of Mr. Boyati, and explain how these measures are compatible with the international human rights obligations of Bangladesh, in particular under the ICCPR and ICESCR.
3. Please provide information on the measures being taken to protect prisoners and prison staff from the COVID-19 pandemic, including measures to secure the early release of Mr. Boyati and those charged for their peaceful activities defending human rights or exercising their right to freedom of thought, conscience, religion and expression, and cultural rights.
4. Please provide information about steps and measures your Excellency's Government has taken to ensure that the 2018 Digital Security Act does not adversely affect freedom of thought, conscience, religion and expression.
5. Please provide information about measures taken to protect those accused under the 2018 Digital Security Act from threats and violence by non-state actors due to the inflammatory nature of the charges.

We would appreciate receiving a response within 60 days. Passed this deadline, 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.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Karima Bennoune
Special Rapporteur in the field of cultural rights

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to reiterate your Excellency's Government's obligations to respect and protect the right to freedom of opinion and expression, including freedom of artistic expression, under article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000, and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Bangladesh on 5 October 1998.

Article 19(1) of the ICCPR guarantees that all individuals "shall have the right to hold opinions without interference". The Human Rights Committee has stressed that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the ICCPR." (General Comment No. 34, CCPR/C/GC/34 para. 48).

Under article 19 of the ICCPR, "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This right includes not only the exchange and dissemination of information that is favorable, but also that which may shock or offend.

We further wish to recall that, according to article 9 (1) and (2) of the Covenant, "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Therefore, for deprivation of liberty to be considered lawful and not arbitrary, established legal procedures and guarantees must be respected.

The right to freedom of expression under article 19 may only be restricted in accordance with article 19(3). Article 19(3) states that restrictions must be "provided by law" and "necessary for respect of the rights or reputations of others" or for the "protection of national security or of public order (ordre public), or of public health or morals." It is not enough that these restrictions be enacted as domestic laws or regulations in order to satisfy the requirement that they are "provided by law". Restrictions must be sufficiently clear, accessible, and predictable for the public to properly regulate its conduct. Laws restricting the right to freedom of expression must not confer "unfettered discretion" on those "charged with its execution" (CCPR/C/GC/34 para. 25). The requirement of necessity implies that restrictions must be proportionate, in particular, they must be "the least intrusive instrument" among those which might achieve the desired result and must be "proportionate to the interest to be protected" (CCPR/C/GC/34 para. 34 and A/HRC/17/27). Furthermore, the Special Rapporteur in the field of cultural

rights, in her report on the right to freedom of artistic expression and creativity (A/HRC/23/34), highlighted that decision-makers, including lawmakers and judges, when resorting to such limitations, should take into consideration the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers and to express their own belief and world vision (para. 85 and 89 d).

Furthermore, we appeal to your Excellency's Government to ensure the right to freedom of thought, conscience and religion or belief in accordance with the principles set forth in article 18 of the ICCPR. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief (CCPR/C/GC/22).

In relation to the charge of "hurting religious sentiments", we would like to stress that, as stated by the Human Rights Committee, laws limiting the right to freedom of expression must themselves be compatible with the ICCPR (CCPR/C/GC/34 para. 37). International human rights law protects individuals from intolerance and violence based on their thought, conscience and religion or belief, but it does not protect the religion or belief itself. Criminalizing speech that include criticism of religious leaders or commentary on religious doctrine and tenets of faith, whilst not amounting to forms of expression prohibited by international law, would limit the discussion of practices within religions and violate the freedom of thought, conscience, religion and expression as guaranteed under articles 18 and 19 of the ICCPR.