

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls

REFERENCE:
AL BGD 6/2020

29 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **systemic and pervasive violence against women in the country, in particular sexual violence, and the inadequacy of the legal provisions currently in force and newly implemented to respond to it.**

According to the information received:

Reports of sexual violence against women have seen a dramatic rise in Bangladesh over the last few years. According to non-governmental sources, the number of reports of rapes had doubled in 2019, reaching 1413 cases. This trend seems to have continued in 2020, between January and September, it is reported that 975 women were raped; at least 208 of those cases were gang rapes and in this period 58 girls under the age of 18 were gang raped.

In January 2020, massive protests erupted after a young woman was raped and tortured. The protesters asked for the perpetrator to be identified and arrested, and for effective measures to eradicate violence against women. In response to a petition filed in connection with this case, the High Court issued a ruling stipulating that the Government should form a commission with the mandate of addressing the issue of the rise of sexual violence within six months. To date, it is not known whether the commission is functioning and no recommendations have been made public.

In September 2020, new protests erupted in the country after a video of a young woman being brutally assaulted, stripped and raped by a group of men was published on social media. The protests called for strict implementation of existing legislation on violence against women and for an end to the culture of impunity that exists in relation to sexual violence cases.

As a result, the Prime Minister instructed the Law Ministry to amend the Women and Children Repression Act to stipulate the death penalty for non-aggravated forms of rape – committed by a single perpetrator, and not causing

the death of the victim. According to Section 9(1) of the Women and Children Repression Prevention Act, sanctions for rape included mandatory imprisonment for life and a fine. Aggravated forms of rape – as stipulated in Sections 9(2) and 9(3), when there is more than one perpetrator or when it causes the death of the victim – could be sanctioned with the death penalty or life imprisonment.

On 12 October 2020, the Cabinet announced it had approved a bill to include the death penalty as a sanction for non-aggravated rape, in addition to life imprisonment. On 13 October 2020, the President issued an ordinance that incorporated the death penalty in Section 9(1) of the Women and Children Repression Prevention Act.

The legal and institutional framework is not conducive to accountability for gender-based violence against women. There are reports that victims who seek assistance at police stations to file complaints are turned away. Victims also report intrusive or discriminatory procedures during investigation and prosecution, including processes for collecting medical evidence, and the requirement to endure lengthy court cases when an alleged perpetrator is prosecuted.

Gaps in legislation also contribute to the situation of impunity. Lack of witness protection provisions leads to the pressuring and harassment of victims, who are often in a situation of a power imbalance relative to the perpetrator. The Evidence Act, in its Section 155(4), specifically allows defence lawyers to present character evidence against the rape complainant in order to show that she was of a ‘generally immoral character’ with the intention of undermining her credibility as a witness. The humiliation and re-traumatisation that this type of questioning engenders makes victims less willing to pursue their cases. Finally, Section 17 of the Women and Children Repression Prevention Act sets out severe penalties for filing false complaints, which may also discourage victims.

We would like to express our grave concern regarding the systemic violence against women in the country, in particular rape and sexual violence, and the lack of effective measures to address it. Indeed, we express our dismay at the regressive response of the Government to this issue, by further expanding the use of the death penalty, a measure that goes against Bangladesh’s international human rights obligations and has no proven effect on crime deterrence.

Rape and sexual violence constitute one of the most egregious human rights violations, with significant impact on victim’s physical and psychological integrity, sexual autonomy, and on gender equality. Under certain circumstances, such acts amounts to torture and other forms of cruel, inhuman or degrading treatment or punishment, contrary to the absolute and non-derogable prohibition codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Bangladesh on 5 October 1998.

We would also like to express our concern that the focus of the Government's response has been on the expansion of the application of the death penalty. While recognizing the extreme cruelty and seriousness of the offence of rape, we wish to recall that there exists no evidence that the death penalty is a particular deterrent to any crime. Resumption of the use of the death penalty is therefore inconsistent with the aim of crime reduction. We are concerned that the expansion of the application of the death penalty would be in contravention of the rights of every individual to life and security, as set out in Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh adhered on 6 September 2000, and would do little to effectively address the root causes for sexual violence in Bangladesh.

In that sense, we express our concern that no other measures have been considered and agreed upon that can effectively promote the implementation of existing legislation, tackle the issue of impunity of violence against women and girls, increase protection for victims of rape and their access to justice, provide remedies and reparations, prevent further violence and amend legislation that is inconsistent with international human rights standards. We are deeply concerned by the ongoing, pervasive gender-based violence against women in the country, and the failure of the Government to comply with its due diligence obligations, under the Declaration on the Elimination of Violence against Women and under articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Bangladesh adhered in 6 November 1984.

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 measures taken to identify, prosecute and punish the perpetrators of the recent rape cases, including for the distribution of videos of the assault.
3. Please provide information about remedies and reparations provided for women who are victims of sexual violence.
4. Please provide information on whether a commission to address the issue of the rise of sexual violence, as mandated by the High Court, has been established by the Government, and whether recommendations have been developed by such Commission and been made public.
5. Please provide information about the measures taken by your Excellency's Government to comply with Bangladesh's due diligence

obligations under CEDAW to investigate, prosecute, punish and provide reparations for gender-based violence against women.

6. Please provide information on the compatibility of the instatement of the death penalty for non-aggravated rape with Bangladesh's international human rights obligations, particularly under the ICCPR.
7. Please provide information on the steps taken to promote the participation of women and civil society organisations in the design and implementation of measures to address gender-based violence against women, in line with Bangladesh's obligations under CEDAW.
8. Please provide information on the criminalisation and prosecution of rape in Bangladesh, in line with the [questionnaire distributed by the Special Rapporteur on violence against women](#) on rape as a grave and systematic human rights violence and gender-based violence against women, in preparation for her upcoming report to the Human Rights Council.

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 provide assistance to victims of sexual violence and to ensure the accountability of the perpetrators. We also urge Excellency's Government to promote the participation of women in the design and implementation of all measures to address violence against women, taking into account the particular situation of women affected by intersecting forms of discrimination, as laid out by the Committee on the Elimination of Discrimination against Women (CEDAW Committee).

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer

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

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, We would like to draw Your Excellency's attention to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3). In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women, whether perpetrated by a State official or a private citizen, in public or private life.

The CEDAW Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In General Recommendation No. 35, the Committee clarifies that the due diligence obligation underpins the Convention as a whole and that States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women. Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.

The CEDAW Committee recommended in its General Recommendation No. 35 that States parties develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women's organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men. In addition, it recommended States parties to adopt and implement effective measures to protect and assist women

complainants of and witnesses to gender-based violence before, during and after legal proceedings. Finally, it recommended States parties to ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. In its General Recommendation No. 33 (2015), the CEDAW Committee stated that States must promote women's access to justice and highlighted that accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination.

In its 2016 review of Bangladesh (CEDAW/C/BGD/CO/8), the CEDAW Committee expressed its concern that gender-based violence against women and girls, including rape, continued to take place in the country. In that regard, the Committee recommended that the State ensure that perpetrators of violence against women are prosecuted and adequately punished and that the victims have access to immediate protection, rehabilitation and means of redress, including compensation. Likewise, the Committee recommended your Excellency's Government to ensure the implementation of the existing legal and policy framework against gender-based violence by providing capacity-building and awareness-raising programmes for the judiciary, the police and law enforcement officials, as well as health-care providers, to sensitize them on all forms of gender-based violence against women and girls and enable them to strictly enforce relevant criminal law provisions and to provide adequate gender-sensitive support to victims.

Following her visit to Bangladesh in 2013, the Special Rapporteur on violence against women expressed her concern on the prevalence of sexual violence against women and girls (A/HRC/26/38/Add.2). She noted that rape was then the second most commonly acknowledged form of violence against women and girls in the country, and yet victims seldom sought legal redress. She also expressed that the main challenges she identified relating to the investigation, prosecution and punishment of perpetrators for acts of violence against women, were due to the lack of: coordinated criminal justice response; expertise and adequate mechanisms to conduct credible investigations; comprehensive redress mechanisms; and understanding of the root causes and consequences of violence against women. Corruption was also identified as one of the main obstacles to women's access to justice, as bribes and/or influence are often required for cases to move through the different stages of the criminal justice system. The Special Rapporteur found that is not uncommon for perpetrators to have more connections, power or resources than victims, which are deployed to influence the police, stall investigations or harass and pressure victims to drop charges. Finally, the Special Rapporteur recommended the Government to strengthen the implementation of relevant legislation applicable to violence against women, and ensure that appropriate sanctions are imposed on perpetrators and State agents who fail to protect and prevent; to take effective measures to ensure access to justice and effective remedies for all women and girl victims of violence, in particular: to ensure that all cases of violence against women are dealt with by formal judicial mechanisms so that victims can access effective remedies. She also recommended other measures to increase protection for victims; to prevent violence against women and promote

societal transformation, including awareness-raising; and to improve data collection and dissemination on violence against women.

According to the Human Rights Committee, in its General comment No. 36 (CCPR/C/GC/36), “the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights”. Therefore, the death penalty does violate the right to life under article 6 of the International Covenant on Civil and Political Rights and does amount to cruel or inhuman treatment under article 7. Exemptions may apply to retentionist States parties within stringent parameters, that is, it is carried out only for the most serious crimes and by a method causing the least possible suffering. According to the Committee, “the term ‘the most serious crimes’ must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing”. Finally, the Committee clarifies that “States parties may not transform into a capital offence any offence that, upon ratification of the Covenant or at any time thereafter, did not entail the death penalty”.

While the ICCPR permits States, which have retained the death penalty to continue to apply it, this "dispensation" should not be construed as a justification for the deprivation of the life of individuals, and does not make the execution of a death sentence strictly speaking legal. It merely provides a possibility for States parties to be released from their obligations under articles 2 and 6 of the Covenant [...] and enables them to make a distinction with regard to persons having committed the "most serious crime(s)". (A/74/318)

In this regard, the United Nations Human Rights Committee has indicated that “States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future ... It is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate and extent in which they resort to the death penalty, or to reduce the number of pardons and commutations they grant” (General Comment 26, Para 50).

In its review of Bangladesh in 2017 (CCPR/C/BGD/CO/1), the Human Rights Committee expressed concern at the high number of cases in which the death penalty is imposed in the State party and the fact that it can be handed down for crimes that do not meet the threshold of the “most serious crimes” (within the meaning of article 6 (2) of the Covenant), urged it to give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. According to the Committee, if the death penalty is maintained, the Government should consider introducing a moratorium on its application and, in any event, undertake legislative reform to ensure that the death penalty is provided only for the most serious crimes.

In his 2012 report on the death penalty (A/67/279), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that in most conditions under which capital punishment is actually applied, it renders the punishment tantamount to torture. Under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment. The Special Rapporteur reminded

that the prohibition of torture and cruel, inhuman or degrading treatment and the strict adherence to safeguards constitute absolute limits on the use and enforcement of the death penalty. The Special Rapporteur noted that, while it may still be theoretically possible to impose and execute the death penalty without running afoul of the absolute prohibition of torture and cruel, inhuman or degrading treatment, the rigorous conditions that States must apply for that purpose make the retention of capital punishment not worth the effort. Even with such conditions, States cannot guarantee that in all cases the prohibition of torture will be scrupulously adhered to. The Special Rapporteur called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture or cruel, inhuman or degrading treatment.