

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
AL BGD 7/2020

10 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 37/12, 43/4 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of **Ahmed Kabir Kishore**.

According to the information received:

Through April and into May of 2020, Ahmed Kabir Kishore, an internationally renowned cartoonist resident in Dhaka, Bangladesh, posted on Facebook a series of cartoons he entitled "Life in the Time of Corona," critical of the Bangladesh government's handling of public health during the pandemic.

On 5 May, Ahmed Kabir Kishore, was arrested for his alleged association with this Facebook page, the use of which was alleged to foster "conspiracy, spreading rumours and misinformation against the prime-minister (...) and her late father..." The co-accused were detained by personnel from the Rapid Action Battalion (RAB) under the Digital Security Act 2018 (DSA).

Due to the coronavirus pandemic, court hearings are presently conducted virtually in Bangladesh. The High Court Division of the Bangladesh Supreme Court denied applications for bail on five occasions – May 17th, June 16th, July 23rd, October 18th and November 10th 2020, and he remains in custody.

Over the same period and in response to the pandemic, many thousands of criminally convicted individuals across Bangladesh were granted early release, the stated rationale being that the virus is a particular threat to prison populations.

Mr. Kishore is an insulin-dependent diabetic; the medical consensus is that such individuals should be considered at additional risk under any measures taken against COVID-19. For the first portion of his detention he was reportedly held at Dhaka Central Jail, Keraniganj district, where there were reports of COVID-19 infections among multiple staff and at least one prisoner in May.

Since September Mr. Kishore has been in Kashimpur Jail, Gazipur district, and most of the time he has been placed in a medical ward of the jail that requires payment of daily fees. When not being treated as a patient, Mr. Kishore has been reportedly detained in overcrowded cells. His brother has been able to provide him with insulin during brief visits. It is reported that Mr. Kishore's health condition is deteriorating, specifically his sight and hearing. These effects are argued to be linked to his diabetes.

Bangladeshi authorities have released many thousands of convicts on grounds that COVID-19 is a particular threat in prison. In hearings held virtually because of the pandemic, The High Court Division of the Bangladesh Supreme Court has denied his bail applications five times, and no trial date has been set.

Reportedly, Mr. Kishore was subject to improper interrogations at the jail gate. As yet, RAB have not submitted a full account of their case against Kishore and no indication has been given of the commencement to trial.

Without prejudice to the accuracy of the allegations made at the time of the arrest, we express serious concern that the arrest and detention of Mr. Kishore is a violation of his right to freedom of expression under Article 19 of the International Covenant on Civil and Political Rights, acceded to by Bangladesh on 6 September 2000, and to cultural expression under Article 15 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), acceded to by Bangladesh on 5 October 1998.

The effective implementation of the right to freedom of expression is indispensable for the effective exercise of other human rights, for democracy and the accountability of public authorities. As highlighted by all international human rights monitoring mechanisms, it protects expressions that shock, offend or disturb, contrarian views and satire. The criminalisation of political critique of public authorities through satire is therefore contrary to freedom of expression. Likewise, the imprisonment of individuals for such expressions is incompatible with freedom of expression.

We have previously raised concerns that the Digital Security Act is incompatible with international human rights law, see OL BGD 4/2018. We have subsequently raised concerns that the law is used to chill and penalize the legitimate exercise of the right to freedom of expression, see for example UA BGD 2/2020). In our view, the application of the legislation to Mr. Kishore's activities as a cartoonist is inappropriate and disproportionate.

Furthermore, we are concerned at Mr. Kishore's physical integrity while in detention, considering his underlying health condition which exposes him to a heightened risk vis-à-vis COVID-19. This may be in contravention of his right to the highest attainable standard of physical and mental health under Article 12 of the ICESCR.

The UN Inter-Agency Standing Committee (WHO and OHCHR); the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other human rights mechanisms have pointed to the specific vulnerabilities of people deprived of their liberty, including their underlying health status and the risks of mass contamination. In the context of a pandemic such as

COVID-19, where the risk of contagion endangers the health and life of the population, States have a greater duty to prevent violations of the rights of persons deprived of their liberty, avoiding overcrowding and ensuring hygiene and sanitation in prisons and other detention centers.

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, and how they comply with Article 19 of the ICCPR, and Articles 12 and 15 of the ICESCR.
2. Please provide any additional information and/or any comment you may have on the application of the DSA to Mr. Kishore's situation and how the legislation complies with the undertakings Bangladesh's government has given to international bodies with regard to safeguarding rights, including to the UN Human Rights Council on May 14th 2018.
3. Please provide any information that accounts for the delay between Mr. Kishore's arrest and the commencement to trial, and alleged improper interrogations.
4. Please provide information on any measures you are able to take for the release and withdrawal of charges against Mr. Kishore in light of our communication.
5. Please provide any information, if the authorities are unable to release Mr. Kishore, as to why he cannot be released on health grounds and what measures are being taken to safeguard Mr. Kishore's physical integrity, considering his underlying health condition during the COVID-19 pandemic.

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 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 issue/s in question.

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

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Special Rapporteur in the field of cultural rights

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000, and to the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Bangladesh 5 October 1998.

We would like to refer your Excellency's Government to article 15 of the ICESCR, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for creative activity. As stressed by the former Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as 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. (A/HRC/23/34, paras. 85 and 89 d).

The current Special Rapporteur has also noted that socially engaged artistic initiatives and the exercise of cultural rights "provide crucial opportunities to build capacity for critical thinking," which is vital in a pandemic. She has also insisted that "All artists jailed for exercising artistic freedom must be immediately released" (A/HRC/37/55, para. 86(b)).

The right to freedom of opinion and expression is enshrined in article 19 (2) of the ICCPR. The right to freedom of expression applies to expressions of any kind, including forms of art and through any form (General Comment no. 34 para. 11 and 12). As reaffirmed by the UN Human Rights Council, "the same rights that people have offline must also be protected online, in particular the right to freedom of opinion and expression" (HRC Resolution on the freedom of opinion and expression, UN doc A/HRC/44/L.18/Rev.1).

The Human Rights Committee has further affirmed that "the scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3." (General Comment no. 34 para. 11) As highlighted by the Special Rapporteur on the freedom of opinion and expression, States must avoid the criminalization of artistic expression (A/HRC/44/49/Add.2 para. 49).

The Special Rapporteur on the freedom of opinion and expression highlighted that the COVID-19 pandemic has disrupted artistic creation, production, distribution and access. The pandemic should not create a context to exacerbate pre-existing patterns of restrictions, such as the targeting of political cartoonists.

(A/HRC/44/49/Add.2 para. 1). The Human Rights Committee has affirmed that penalization of a publisher "... solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression" (*Id.* para. 42).

We would like to further refer your Excellency's Government to article 12 of the ICESCR that protects the right of everyone to the highest attainable standard of physical and mental health. Accordingly, States have the obligation to respect this right by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 34).

In its Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights (E/C.12/2020/1), the Committee on Economic, Social and Cultural Rights notes that persons with pre-existing health conditions and those with compromised immune systems are particularly vulnerable to serious health consequences if infected by COVID-19 (para 5). The Committee, therefore, urges States parties as a matter of urgency, to adopt special, targeted measures, to protect and mitigate the impact of the pandemic on vulnerable groups (para 15).

Furthermore, in its Advice relating to the COVID-19 pandemic (CAT/OP/10), the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment notes that persons deprived of their liberty are a particularly vulnerable group, owing to the nature of their restrictions and the limited capacity to take precautionary measures. Within prisons and other detention settings, many of which are severely overcrowded and insanitary, there are also increasingly acute problems (para 2). The Subcommittee reiterates States' responsibility for the health care of those whom it holds in custody, and that prisoners should enjoy the same standards of health care available in the community, with access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

Given the heightened risk of contagion among those in custodial and other detention settings, the Subcommittee urges all States to, *inter alia*, reduce prison populations by implementing schemes of early, provisional or temporary release; ensure that appropriate measures are put in place for those who are particularly vulnerable to infection as well as provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible.