

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 2/2021

31 March 2021

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; Special Rapporteur in the field of cultural rights; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 43/20, 37/12, 45/3, 44/5, 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 alleged torture and ill-treatment while in detention of **Ahmed Kabir Kishore** and **Mushtaq Ahmed**, and the subsequent death in custody of Mr. Ahmed.

Ahmed Kabir Kishore, 46, is a prominent Bangladeshi cartoonist and Mr. Mushtaq Ahmed, 53, was a writer. Concerns regarding Mr. Kishore's arrest and possible arbitrary detention were raised by Special Procedures mandate holders in a previous communication dated 10 December 2020 (JAL BGD 7/2020). We regret that to date, no reply to this communication has been received.

According to the information received:

Since May 2020, Mr. Kishore and Mr. Ahmed were being held in pre-trial detention following charges related to 'spreading rumours and carrying out anti-government activities' or 'defamation', in violation of the Digital Security Act, for criticizing the Government's management of the COVID-19 pandemic. Concerns about the use of the Digital Security Act to silence dissent has been the subject of several human rights concerns previously raised by Special Procedures' mandate holders in various communications.

Nine months later, on 23 February 2021, Mr. Ahmed and Mr. Kishore were brought before a cyber-crimes tribunal for a hearing, where both were denied bail, for the sixth time. The judge directed the investigators to launch a 'further probe' into the case and submit a report by 23 March.

On 25 February, Mr. Ahmed was reported dead at Kashimur High Security Prison. Prison authorities claim that he died as a result of a heart attack, while

other sources allege that he was tortured during his detention in the custody of police.

A week following the death of Mr. Ahmed, on 3 March 2021, about 10 months since their arrest, Mr. Kishore was granted bail on health grounds. Mr. Kishore is an insulin-dependent diabetic. He suffered from severely high levels of blood sugar during his incarceration. His physical integrity had seriously deteriorated since his arrest due to alleged acts of torture while in detention compounded by his underlying health condition. This has triggered a continuous need for appropriate medical care. On 5 March, he was released from Kashimpur Central Jail-2 on bail.

Following his release, we were informed that Mr. Kishore had been arrested by officers in plain clothes on the night of 2 May 2020, three days prior to the official recorded date of arrest, and remained forcibly disappeared during this short period. During his initial detention he was blindfolded and interrogated, he was questioned about his cartoons which were displayed in front of him. Not only was he threatened to be killed, but he was severely tortured as well. The harsh beatings caused his ear drums to burst and scarring on his legs. He was hit on his back, on his legs and the back of his head throughout the interrogation. He was not well fed and was given stale/spoilt food twice a day during his stay. He did not receive adequate medical attention for his injuries – including those he sustained to this foot and his right ear and, as a result, he is now unable to hear anything with his right ear. In addition, he has since experienced severe pain in his left knee and ankle and has difficulty walking.

As far as Mr. Ahmed is concerned, we received information that he had been subjected to electric shocks on the genitals and smelled of urine.

When they appeared before the court or questioned about whether they had faced any ill-treatment, both of them denied it for fear of being subjected to further ill-treatment.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern, should they be confirmed, at what may constitute the arbitrary arrest and detention, torture or ill-treatment of these two individuals, as well as Mr. Ahmad's death in custody which may have resulted from the torture he was subjected to in detention. In order to address these extremely serious allegations, we are calling for an immediate, thorough and impartial investigation into all allegations of abuse, as well as of the circumstances surrounding Mr. Ahmad's death.

Should the above facts alleged be confirmed, they would contravene and constitute violations of international norms obliging Bangladesh, inter alia, articles 6, 7, 9, 10, 14, and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Bangladesh on 6 September 2000, article 15 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Bangladesh on 5 October 1998, as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was acceded to by Bangladesh on 5 October 1998.

We express serious concern at the alleged recording of a false date of arrest for Mr. Kishore, who may thus have been subjected to enforced disappearance during a 3-day period, and during which he was interrogated in secret without due process rights. Should these allegations be correct, this would be in contravention of Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, whereby anyone arrested and held in detention should either promptly be charged with a recognizable criminal offence or brought before an independent and competent judicial authority or immediately released.

We further reiterate our serious concern at allegations that the Digital Security Act continues to be used to silence individuals' right to freedom of expression, to take part in cultural life and to hamper the peaceful and legitimate activities of journalists, bloggers, artists and others who speak out against the current political practices.

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 about the factual and legal grounds for the arrest and detention of these two men, and explain how these measures are consistent with the international human rights obligations of Bangladesh under the conventions it ratified.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to consistent allegations of torture and/or cruel, inhuman or degrading treatment of persons in custody. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Bangladesh.
4. Please provide information on measures adopted by your Excellency's Government to ensure the right of persons to effective remedy for human rights violations, including arbitrary arrest and detention, torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Bangladesh.

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.

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.

Given the seriousness of these allegations, we believe that they merit the most urgent attention on the part of the authorities to be addressed as they should. For the same reason, we may consider publicly expressing our concerns in the near future as, in our view, the public should be informed about the implications of these cases for the protection and exercise by people in Bangladesh of their rights. Any public expression of our concerns 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.

Nils Melzer

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

Karima Bennoune

Special Rapporteur in the field of cultural rights

Tae-Ung Baik

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan

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

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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 following obligations under international human rights law.

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 7 of the International Covenant on Civil and Political Rights (ICCPR), provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” We would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, “[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished”. Article 12 of the CAT requires that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Article 6 of the ICCPR provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility). The purpose of the investigation is to clarify the circumstances surrounding the death and to contribute to preventing the recurrence of death in custody, reducing trauma and providing an effective remedy to the next of kin and the identification, prosecution and punishment of those responsible. In this regard, Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, states that there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”.

Moreover, we would like to remind your Excellency's Government of the arbitrary arrest or detention, liberty and security, provided for in articles 9 and 10 of the ICCPR.

The freedom of opinion in article 19 (1) is absolute and the freedom of expression in article 19 (2) is subject to limitation only in accordance with paragraph 3 of the provision. Any restriction to the rights under articles 19 (2) must pursue a legitimate aim, in accordance with a law that is sufficiently clear, and conform to the requirements of necessity and proportionality. The right to freedom of expression applies to expressions of any kind, including forms of art and through any form. This

includes “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 and 12). As highlighted by the Special Rapporteur on freedom of opinion and expression, States must avoid the criminalization of artistic expression (A/HRC/44/49/Add.2 para. 49). We underscore that attacks against individuals, such as through arbitrary detention, torture and ill treatment, for the exercise of expression is incompatible with the ICCPR, and refer your Excellency’s Government to Human Rights Committee, General Comment no 34 para 23 in this regard.

We would also like to draw your Excellency's attention to the obligation of Bangladesh under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which it is a party. Article 15 of the ICESCR recognizes 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 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 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. In her report on COVID19 and cultural rights, she noted that “The repression of artistic voices seeking to engage critically with issues relating to the pandemic and responses to it not only gravely undermines the rights of artists but also threatens societies as a whole.” (A/HRC/46/34, para. 24).

Moreover, according to Article 12 of the ICESCR, States have the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access to preventive, curative and palliative health services for all persons, including prisoners or detainees (General Comment CESCR 14, paragraph 34). We further refer to the UN Standard Minimum Rules for the Treatment of Prisoners (unanimously adopted by the UN General Assembly A/RES/70/175, the “Mandela Rules”) which establish States’ responsibility to provide equivalence of care to prisoners i.e. the same standards of health care that are available in the community. In addition, principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, states that all prisoners should have access to the health services available in the country without discrimination on the basis of their legal status.

We wish to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which prohibits enforced disappearances and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1), that an official up-to-date register of all persons deprived of

their liberty shall be maintained in every place of detention (article 10.3). In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.