

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; 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 torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL BGD 3/2021

13 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; 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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 41/12, 42/22, 45/3, 44/5, 43/4 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the dispersal by law enforcement authorities and members of the ruling party Awami League of a series of peaceful demonstrations organized by different political and civil society groups during and after Indian Prime Minister Modi's visit to attend the celebrations of the 50th anniversary of the country's independence and the birth centenary of 'Bangabandhu' Sheikh Mujibur Rahman, and the alleged related excessive use of force against demonstrators which led to at least 17 people being killed and several injured.

According to the information received, the protesters' intentions were peaceful and protests started peacefully; yet violence surged at the hands of certain groups and at certain locations. Given disagreement of several sections of Bangladeshi society around this visit, there were tensions building up. The violence led to deaths, injuries, arrests and destruction of properties.

According to the information received:

On 26 March, Hefazat-e-Islam Bangladesh (HiB), religious group along with the Student's Rights Council (Chhatra Adhikar Parishad) and other groups called for a protest against Prime Minister Modi's arrival in Dhaka. The protest was scheduled to take place after Friday prayers outside Dhaka's main mosque, Baitul Mokarram. A group of persons identified as members of the ruling party and the student wing associated with the ruling party Awami League (Bangladesh Chhatra League, BCL) allegedly gathered around the mosque before the starting of the prayers and launched an attack with sticks and firearms against the worshippers trying to start the protest. In response, the police fired tear gas and rubber bullets. Shots were also fired directly at protesters, but it is unclear whether it was the police or the student wing associated with Bangladesh Chhatra League, BCL. They allegedly acted as one. Both the police and the BCL were armed and used force against the protestors. According to information received, BCL were using arms given to

them by the police. As security agencies were allegedly present also in plain clothes, it was difficult for protestors to understand who belonged to security agencies and who belonged to BCL.

The attack on the protesters on 26 March triggered clashes and violence that spread to many municipalities on 27 and 28 March, including Chittagong's Hathazari, where HiB's leaders are based; and in the eastern district of Brahmanbaria. Police stations, public offices, ruling party's offices, and buses were burnt and vandalized during the three-day violence. According to the General Secretary of HiB, 17 of their members were killed mostly in Brahmanbaria, Hathazari and Dhaka, over 200 have been detained and arrested and nearly five hundred have been injured. Police claimed that ten police officers have been injured.

The police not only reportedly failed to protect the protesters from the attacks of the ruling party activists but also resorted to unlawful, unnecessary and excessive force themselves.

The authorities have also reportedly blocked access to social media platforms, including Facebook and Messenger, from 26 March evening to 30 March evening without any formal notice.

In the aftermath of the protests, a number of opposition activists have been picked up by law enforcement agencies in a way that may amount to enforced disappearances. Law enforcement agencies failed to acknowledge their fate and whereabouts, and denied the activists were held in custody. On 28 March, the Bangladesh Nationalist Party's Executive Committee member Nipun Roy Chowdhury was allegedly picked up from her Rayerbazar residence by a group of around 20 plain clothed officers belonging to the Rapid Action Battalion (RAB). Nipun's whereabouts remained unknown for hours. Her family went to the police who denied having any knowledge about Nipun. Late in the evening the Rapid Action Battalion's spokesperson Lt. Col. Ashique Billah admitted to the media that the RAB arrested Nipun Roy Chowdhury for alleged 'subversive action'. She was placed on three-day police remand. She was produced before the court on 29 March. Nipun was in contact with her family via phone and alleged that agents of RAB tortured and sexually assaulted her after the arrest and during her detention. She remains in Dhaka central jail at the time of writing this communication. Her bail application was rejected by Chief Metropolitan Magistrate Court of Dhaka. The next hearing of her bail plea is scheduled on 9 May 2021. According to information received, 56 members of the student organization, Chhatra Adhikar Parishad were picked up and many of their whereabouts are still unknown. Leaders and other members of this organization remain in hiding. They claim that 70 of their members sustained injuries.

Lack of any preventive measures and dialogue prior to the visit of the Indian Prime Minister made the situation extremely tense. Instead of appealing for peace and harmony, the law Minister and the Chief of police used threatening language against protestors telling them to be ready for consequences.

While we do not wish to prejudge the accuracy of these allegations, we express our concern over the numerous allegations of excessive use of force by police

and security forces in response to the protests that took place across the country. Such reactions by the authorities appear to be a recurrent pattern in the country. We are deeply concerned by the alleged use of lethal and disproportionate force against protesters, including through the use of live ammunition, indiscriminate use of tear gas and other violent acts, which reportedly caused hundreds of injuries and resulted in a number of deaths. We acknowledge that according to the information received, in some cases certain protesters may have resorted to violence. However, we recall legal principles dictate that the measures to separate violent protesters from those protesting peacefully should be proportionate to the evaluated risk, necessary, with a specific focus, and applied in a non-discriminatory way. We are consequently alarmed by the scale and geographic spread of the allegations of indiscriminate violence against protesters. We are additionally troubled by reports of attacks on protesters by private parties, who are alleged to be sympathisers of the Government, as well as what appear to be limited efforts by the relevant authorities to prevent and investigate these allegations thus far. If confirmed, these allegations would be in contradiction with the States' responsibility to protect peaceful protesters and ensure that there is an enabling environment for protesters to assemble safely, and to take action against those who instigate violence. We also note that States have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to facilitate the exercise of the right to freedom of peaceful assembly (A/HRC/20/27). We express further concern at the shutting down of some social media platforms as a means to obstruct peaceful protests and restrict the free flow of information.

In addition, we express concern at the alleged arbitrary arrests and detention of protesters and political opponents which in some cases may amount to enforced disappearances. We recall that arrest and detention due to peaceful exercise of rights protected by the Covenant, including freedom of expression and association, may be arbitrary. We also express concern at allegations of torture while in police custody. More generally, we are concerned that the present incidents highlight the restrictive conditions that exist more generally for the exercise of the expression of dissent in Bangladesh.

We recall 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. In this regard, full compliance with procedural safeguards upon arrest and during the first hours of deprivation of liberty is essential to prevent possible human rights violations. These safeguards include immediate registration and judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the assistance of a defence lawyer of one's choice.

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 regarding the arrests, legal basis for such and any subsequent prosecutions and trials. Kindly also indicate whether the accused have been afforded their right to receive legal assistance.
3. Please provide the details and, if available, the results, of any investigation, medical and judicial, or other inquiries carried out in relation to the alleged deaths and injuries of protesters in the context of the above-mentioned allegations. If no inquiries have yet taken place, or if they have been inconclusive, please explain why.
4. Please provide the details and, if available, the results, of any investigation, medical and judicial, or other inquiries carried out in relation to the allegations of torture and enforced disappearances against opposition activists. If no inquiries have yet taken place, or if they have been inconclusive, please explain why.
5. Please provide information on the fate and whereabouts of the opposition activists and protesters who remain in state custody.
6. Please provide information about the directives issued, if any, by the Government to law-enforcement personnel concerning the precise circumstances in which the use of force is authorized, and indicate how these directives comply with Bangladesh's obligations under the International Covenant on Civil and Political Rights, as well as with the requirements of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
7. Please provide any information about measures taken or to be taken to ensure that peaceful protests can be carried out without the threat or use of force.
8. Please kindly indicate what measures have been taken to ensure that political and civil society groups in Bangladesh can work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
9. Please explain the legal basis for the restrictions on Internet access and how this is consistent with your Excellency's Government's obligations under the ICCPR.

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.

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

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.

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

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

Morris Tidball-Binz  
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

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

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to refer you Excellency's Government to articles 9, 19, and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bangladesh on 6 September 2000, which guarantee the rights to liberty and security of person, the right to freedom of opinion and expression and the right to freedom of peaceful assembly, respectively.

We would like to draw the attention of your Excellency's Government to resolution 25/38 of the Human Rights Council, which urges states to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force. In addition, we would like to draw the attention of your Excellency's Government to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which provides that force may only be used as a last resort when unavoidable and only when less dangerous means are not practicable.

In this regard, we would also like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) also provides detail on the duty to investigate potential unlawful deaths "promptly, effectively and thoroughly, with independence, impartiality and transparency". In particular, we note the authorities must "conduct an investigation as soon as possible and proceed without unreasonable delays."

We would also like to remind your Excellency's Government that article 19(3) of the ICCPR requires that any restriction on the right to freedom of expression (i) is provided by law; (ii) serves a legitimate purpose; and (iii) is necessary and proportional to meet the ends it seeks to serve. In this connection, we also wish to recall the principle enunciated in Human Rights Council Resolution 12/16. The Resolution calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. We also underline that permissible restrictions on the internet are the same as those offline (A/HRC/17/27).

We recall that the ICCPR guarantees the rights to freedom of peaceful assembly and of association in its articles 21 and 22. These rights can be subject to certain restrictions in strict conditions of necessity and proportionality only. In this regard, we would like to refer to Human Rights Council Resolution 24/5 which

“reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others”. With regard to the de facto prior authorization to hold assemblies, we recall that the exercise of fundamental freedoms should not be the subject of previous authorization and that the suspension or de-registration of an association constitutes one of the severest types of impediment to the right to associate (A/HRC/20/27, para. 28 and 75). We would like to refer to the recently adopted General Comment No. 37 of the Human Rights Committee on Right of peaceful assembly ([CCPR/C/GC/37](#)), which stressed that “the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. [...] States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner”.

With regard to Internet restrictions, we wish to express our concern about the negative effects that restrictions on Internet access may have on the right to freedom of opinion and expression, in particular the right to impart and receive information, and the right to peaceful assembly. In this context, we recall that the Human Rights Council has “condemned unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and called upon all States to refrain from and cease such measures.” (HRC resolution 32/13).

In connection with the above arrest of political figures and other individuals, we would like to refer to the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 14 of the ICCPR.

Article 9(1) of the Covenant requires that no one is deprived of his liberty except on such grounds and in accordance with such procedure as established by law. This would normally require the issuance and presentation of a warrant for and during the arrest. In addition, we would like to remind that pursuant to article 9(3) of the Covenant that pre-trial detention is an exceptional measure and must be assessed on an individual basis. The rationale in paragraph 3 of article 9 also indicates that alternative measures including house arrest, judicial monitoring, release on bail shall not be regarded as compulsory vis-à-vis a pretrial detention but rather optional. The consideration of alternative non-custodial measures allows it to be ascertained whether the principles of necessity and proportionality have been met (see A/HRC/19/57, para. 54).

Detention should be assessed at all stages of proceedings, non-custodial measures should be taken whenever possible, and particularly during public health emergencies (Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, para. 14). Moreover, we would like to recall that article 9.3 requires that the arrested person shall be brought promptly before a judge. The decision on the need to subject the accused to pre-trial detention shall be taken by a judge or immediately subjected to judicial oversight. The fact that the prosecution, as the investigative authority, decides on the need to impose the pretrial detention represents a conflict of interest, which can negatively affect the rights and guarantees of the individual under the Covenant.

Article 9 (4) of the Covenant provides that “[a]nyone 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”. In this respect, “[t]he right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible. In general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise. The court must have the power to order the detainee brought before it, regardless of whether the detainee has asked to appear” (CCPR/C/GC/35, para. 42). Moreover, “[t]o facilitate effective review, detainees should be afforded prompt and regular access to counsel. Detainees should be informed, in a language they understand, of their right to take proceedings for a decision on the lawfulness of their detention” (Ibid, para. 46).

We would also like to recall that the deprivation of liberty as punishment for the legitimate exercise of the rights to freedom of opinion and expression and freedom of assembly and association is arbitrary. Moreover, enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention and imprisonment after a manifestly unfair trial is arbitrary. (CCPR/C/GC/35, para. 17).

The right to have access to a lawyer without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8).

We also recall that enforced disappearance constitutes a particularly aggravated form of arbitrary detention as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights (see namely opinions No. 82/2018, para. 28; No. 18/2019, para. 33).

We would also to recall once that the Declaration on the Protection of all Persons from Enforced Disappearance proclaims that no State shall practice, permit or tolerate enforced disappearance (article 2); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority *promptly* after detention and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); 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 (article 7). Article 13 requires States to guarantee that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

Furthermore, we draw Your Excellency's Government's attention to the general comment on women affected by enforced disappearances issued by the Working Group on enforced or involuntary disappearances (A/HRC/WGEID/98/2), which stresses, inter alia, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and social stigma as well as the disruption of family structures.

Also, 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 ratified on 5 October 1998. Articles 2 and 16 of CAT requires State party to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction, and article 12 of CAT specifically requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed.

We further respectfully remind your Excellency's Government of the provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law.

We would also like to recall the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2 which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, as well as to articles 5(a) and (b), 6(b) and (c) and 12, paras 2 and 3. In this regard, we also wish to refer to the Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.