

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 on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL BGD 4/2021

28 June 2021

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 on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 43/4, 42/22, 43/16, 43/20 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention and prosecution of Ms. Rozina Islam, an investigative journalist for Prothom Alo newspaper, the country's largest newspaper.

According to the information received:

On 17 May 2021, Ms. Rozina Islam went to the Health Ministry for a meeting with the health services secretary. Shortly after her arrival, Ms. Islam was allegedly locked in a room and had her phone confiscated, which sources believe gave the authorities the possibility to plant false evidence. She reportedly fell ill and fainted during her detention in the office that lasted over five hours. Sources allege that she was subjected to harassment and intimidation during this period.

On the following day, Ms. Islam was presented before the Dhaka Chief Metropolitan Magistrate Court, where police requested for her to be remanded in custody for five days. This request was denied by the Court and Ms. Islam was then sent to Kashimpur Central Jail.

It is reported that an official of the Ministry accused her of having been using her cell phone without permission to photograph documents related to government negotiations to purchase COVID-19 vaccines, in violation of sections 3 and 5 of the colonial era Official Secrets Act 1923 and sections 379 and 411 of the Penal Code. She reportedly faces up to 14 years in prison and the possibility of the death penalty. On 23 May, Ms. Islam was granted bail on the condition that she surrenders her passport and does not leave the country.

It is reported that her detention comes a few weeks after Ms. Islam had published investigative reports on alleged corruption and mismanagement in the health sector and irregularities in the purchasing of emergency medical supplies to respond to the Covid-19 pandemic. Sources allege that her detention and prosecution may be related to her critical reporting.

We express grave concern at the alleged arrest and detention of Ms. Rozina Islam under charges that seem to relate to the expression of critical opinions about the Government's handling of the COVID-19 pandemic. The alleged circumstances of her arrest raise further concerns that she may be prosecuted in retaliation of her critical reporting. We are further concerned at the use of the Official Secrets Act 1923, which is a broad and unspecific state security legislation and provides for harsh penalties. We are seriously concerned that the use of security related legislation in the context of investigative journalism into a public health issue which is of immense interest to the public has a chilling effect on media freedom in the country, and could be detrimental to the objectives of the Government to build public trust in its efforts to address the pandemic.

If confirmed, the facts alleged would be in contravention, among other norms, with articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000. They guarantee the rights not to be arbitrarily deprived of liberty and the right to freedom of opinion and expression, including the right to seek, receive and impart information.

In his report on disease pandemics and the freedom of opinion and expression, the former Special Rapporteur on freedom of opinion and expression noted that the "freedom to share information and ideas empowers individuals and communities, human development and democratic self-governance. In certain circumstances, information saves lives. By contrast, lies and propaganda deprive individuals of autonomy, of the capacity to think critically, of trust in themselves and in sources of information, and of the right to engage in the kind of debate that improves social conditions" (A/HRC44/49, para. 60).

In this context, we underscore that the Right to Information Act, adopted by Bangladesh in 2009, by placing an obligation on the State to disclose information of public interest recognises the right to information as an integral part of the freedom of thought, conscience and speech, as enshrined under article 39 of the Constitution of Bangladesh.

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.

We are issuing this appeal in order to safeguard the rights of Ms. Islam from irreparable harm and without prejudicing any eventual legal determination.

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 additional information on the factual and legal basis for the arrest and detention of Ms. Rozina Islam, as well as the compatibility of her detention and the charges brought against her with

article 19 of the ICCPR.

3. Please indicate the views of the Government on the use of the Official Secrets Act against the media in light of the State's obligation to disclose information of public interest under the RTI.

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 measures be taken to investigate the alleged violations 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 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 urgent appeal and the regular procedure.

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

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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, the facts alleged, if proved correct, appear to be in contravention, among other norms, with articles 9, 14, and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000.

We wish to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal, noting that detention for the peaceful exercise of rights is arbitrary in accordance with the article 9 of the Covenant, Resolution 24/5 of the Human Rights Council and the Committee on Human Rights, General Comment No. 35, and General Comment 37 (2020), as well as the jurisprudence of the Working Group on Arbitrary Detention.¹

In addition, we would also like to draw the attention to the jurisprudence of the Working Group on Arbitrary Detention stating that access to information or freedom of expression is the precondition to the fulfillment of all other rights in the democratic society. Access to information and freedom of expression are closely connected. If information is not available, the freedom of expression will be meaningless. These rights have been recognized as human rights in the Universal Declaration of Human Rights². According to the Declaration on Human Rights Defenders, article 6 (c) Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters, to investigate, gather information regarding human rights violations and report on them. Under international human rights law, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.³

Article 9 of the ICCPR requires that arrests be carried out in accordance with the law and the procedure prescribed by it. Paragraph 3 stipulates that anyone who is deprived of his liberty by arrest or detention is entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the individual's detention and order their release if the detention is not lawful. Paragraph 4 requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Human Rights Committee, General Comment No. 35, para. 38).

¹ See A/HRC/23/40/Add.1 and Opinions Nos 79/2018; 28/2018; 83/2018; 16/2017

² See CCPR/C/GC/34 at para 2. See WGAD Opinion No. 8/2009, para. 18

³ See WGAD Opinion 83/2018

As stated by the Human Rights Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of article 19.

In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’. Further, the Human Rights Committee made clear that “It is not compatible with article 19 paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information”.

We emphasize, in this regard, that journalism provides an essential service for any society, as it equips individuals and society as a whole with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions (A/HRC/20/17 para. 3). We also recall that a free, uncensored, and unhindered press constitutes one of the cornerstones of a democratic society (CCPR/C/GC/34 para. 13).

In this respect, we would further like to refer to the Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council expressed “deep concerns about all attempts to silence journalists and media workers, including by legislation that can be used to criminalize journalism, by the misuse of overbroad or vague laws to repress legitimate expression, including defamation and libel laws, laws on misinformation and disinformation or counter-terrorism and counter extremism legislation, when not in conformity with international human rights standards, and by business entities and individuals using strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting”. The resolution also recognised that the development of national legal frameworks that are consistent with States’ international human rights obligations are an essential condition for a safe and enabling environment for journalists.

The charging of Ms. Islam with national security crimes under the Official Secrets Act also raises concerns as the provision is vague and constitutes unnecessary and disproportionate restriction on freedom of expression. The Human Rights Committee has highlighted that ‘[e]xtreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that confirms to the strict requirements of paragraph 3’. The Committee noted that ‘to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others for having disseminated such information’ is not compatible with article 19 of the ICCPR. We underscore that any attacks against individuals for exercising their rights to freedom of expression should be “vigorously investigated in a timely fashion, and the perpetrators prosecuted”, CCPR/C/GC/34 para. 23.

In relation to the allegations indicating that Ms. Islam is being targeted because of her activities defending human rights, we would further like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to 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.

In addition, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

In her report on violence against women journalists (A/HRC/44/52), the Special Rapporteur on violence against women highlighted the gendered manifestation of violence affecting women journalists in their work, and particularly the risks of rape and sexual violence they face while reporting or detained. In that sense, she recommended that States fully apply international human rights standards on the freedom of expression and the protection of journalists, as well as women's rights instruments related to the prohibition of discrimination and gender-based violence against women, using the synergies between them to ensure the safety of women journalists working in independent news media and government-affiliated media entities, freelancers and other news media workers.