

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

Ref.: AL BGD 4/2022
(Please use this reference in your reply)

22 December 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 45/3, 50/17 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **an alleged smear campaign against Bangladesh-based human rights organisation Odhikar, as well as acts of intimidation and harassment against its Secretary, Mr. Adilur Rahman Khan. We understand that this campaign may also aim to question the humanitarian procedure of the Working Group on Enforced or Involuntary Disappearances (hereafter, 'WGEID' or 'Working Group') as well as the authenticity of the claims brought to it by relatives of the victims and civil society organizations. The allegations received also refer to acts of harassment and intimidation against members of the NGO Maayer Daak (Mothers' Call).**

As Special Procedures mandate-holders, we have raised our concerns in the past regarding allegations of intimidation and harassment against civil society and human rights defenders in Bangladesh, because of their work and cooperation with UN human rights mechanisms. We have also raised concern about judicial harassment against Odhikar's Secretary Mr. Adilur Rahman Khan (JAL BGD 6/2021 and JUA BGD 2/2022). References to Mr. Adilur Rahman Khan and Odhikar have also been included in the 2011, 2019, 2020, 2021 and 2022 reports of the Secretary-General which have documented instances of reprisals against persons for having cooperated with United Nations human rights mechanisms, in connection with accusations of anti-State and anti-Government activities following their engagement in the first cycle of the UPR of Bangladesh in 2009.

While acknowledging the detailed reply provided by your Excellency's Government to communication JUA BGD 2/2022, we reiterate our concerns in relation to continued incidents of intimidation and reprisals against members of civil society organisations and victims of enforced disappearances and their families. We regret that no response has been provided yet to communication JAL BGD 6/2021.

According to the information received:

Several outlets have undertaken a smear campaign against the Working Group on Enforced or Involuntary Disappearances and against Bangladesh-based human rights organisation Odhikar. These outlets have reported inaccurate and misleading information on the WGEID's activities, including its humanitarian procedure. For example, they published media notes questioning the contents

of a *UN report on enforced disappearances in Bangladesh* and a *UN report listing victims of enforced disappearances*. These media reports refer to some individuals allegedly included erroneously in the UN “listing” of victims, and accuse the WGEID of conducting “sloppy” work.¹ However, the Working Group has not published any report focusing exclusively on enforced disappearances in Bangladesh, nor has it published any list of individuals, due to the confidential nature of its [individual case procedure](#).² Moreover, as part of the procedure, Governments and sources of cases may, at any time, provide clarifications or corrections which the WGEID analyses carefully, and on the basis of which it can make decisions regarding the clarification or discontinuation of cases. If there are any potential inaccuracies on any of the outstanding cases, these may be brought to the attention of the WGEID by either the concerned Government or by the source of the case, as part of the procedure itself.

It was also reported that on 11 December 2022, during the Government’s Human Rights Day celebration, all participating diplomats were handed a package which included a paper written by a professor at the Canadian University of Bangladesh, questioning the work of the WGEID and the authenticity of its claims.

By bringing into question the authenticity of the submitted claims about enforced disappearances, the media has reportedly accused Odhikar of wrongly influencing the WGEID’s reports and action. This narrative seems to have been supported by high profile ministers and government officials. For instance, the Prime Minister Sheikh Hasina’s son Sajeeb Ahmed Wazed, Advisor to the Prime Minister on Information and Communication Technology, has used his verified Facebook account to challenge the credibility and integrity of the WGEID.

These incidents have reportedly taken place while the Government of Bangladesh has intensified surveillance on the members of Odhikar, including its Secretary Mr. Adilur Rahman Khan.

As reported in the 2022 Secretary-General report on cooperation with the UN human rights mechanisms (A/HRC/51/47), which focuses on instances of retaliation, Odhikar and its staff continue to be under Government surveillance. As of April 2022, Odikhar’s bank accounts remained frozen and their application to the NGO Affairs Bureau for the renewal of its registration is pending. Sources also reported that the surveillance of Odhikar particularly intensified following the visit to Bangladesh by the former UN High Commissioner for Human Rights, Michelle Bachelet, in August 2022.

¹ See: <https://www.indiatoday.in/world/story/un-report-on-enforced-disappearances-in-bangladesh-replete-with-errors-2002564-2022-09-20>, <https://www.indiatoday.in/world/story/experts-criticise-error-un-report-on-forced-disappearances-in-bangladesh-2007495-2022-10-02>, <https://video.ryansmedia.com/details/634ad32042303d33e86d7130>

Every year the WGEID publishes an [annual report](#), which includes a table indicting the number of outstanding cases in all countries under review by the Working Group. Prior to the publication of the report, the concerned Governments receive a full list and details on each of the cases. The list, however, is not included in the annual report.

Concerning the Harassment and Intimidation of Mr. Adilur Rahman Khan

Mr. Adilur Rahman Khan recently faced harassment at Dhaka airport when traveling to attend a meeting of laureates of South Korea's Gwangju Human Rights Prize, in Bangkok, Thailand.

According to the information received, on 4 October 2022 the Special Branch (SB) Prosecution Unit of the Dhaka Metropolitan Police stopped Mr. Khan while he approached the immigration counters at the airport prior to travelling to Bangkok. The police officials took him to their office at the airport and informed him that the new passport he had applied for was not valid for travel. Mr. Khan asserted that he had not applied for any passport and claimed that the authorities were unlawfully harassing him.

Mr. Khan remained at the police office for two hours, after which he was transferred to the airport's arrival hall. There, a plain-clothes police officer, who refused to identify himself, questioned him about his identity, phone number, flight ticket, hotel reservation, and the documents of the host organisation. The officer took the specifics of Mr. Khan's hotel in Bangkok and the flight schedules of his return to Bangladesh.

The officer also asked about Odhikar's office location, the list of the victims of disappearance which the organization was assisting and accused Mr. Khan of having "engaged in anti-State activities". After half an hour of interrogation, the SB police registered a General Diary Entry (Number 180) with the Airport Police station and instructed the immigration officers to stamp Mr. Khan's passport, allowing him to board the Thai Airways' flight.

Upon Mr. Khan's return to the Dhaka airport on 7 October 2022, the Immigration Police kept his passport at the counter asking him to wait. Then, agents of the Special Branch Prosecution Police took Mr. Khan to their office at the airport, where he stayed for around half an hour. Mr. Khan received instructions from an officer of the Directorate General of Forces Intelligence (DGFI) to approach the Immigration Counter to have his passport stamped. Mr. Khan was eventually allowed to leave the airport.

On a trip to an International Federation for Human Rights meeting in Paris on 21 October 2022, Mr. Khan experienced a similar treatment.

Mr. Khan was also charged with cyber-crime under the Information and Communications Technology Act of 2006 at the Cyber Tribunal of Dhaka (Cyber Tribunal Case #01/2013). Serious concerns have been raised regarding the political nature of the charges against him (AL BGD 6/2021). Mr. Khan has been accused of publishing false information, disrupting law and order in the country, and of subversive activities based on his work documenting enforced disappearances and other human rights violations by Bangladeshi military, law enforcement, and intelligence agencies.

While the judicial case started in 2013, the pace of the prosecution seems to have accelerated since September 2022, coinciding with the WGEID release of its annual report concerning all countries and including Bangladesh. With the aim to push for a quick conviction, the prosecution at the Cyber Tribunal of

Dhaka has asked for more frequent hearings, during which they would be presenting witness testimonies.

Concerning the Harassment and Intimidation of members of the NGO Maayer Daak

Maayer Daak (Mothers' Call) is an association formed by the mothers and wives of victims of enforced disappearance in Bangladesh.

Its members have been harassed and intimidated by law-enforcement agencies and intelligence units of the country. In particular, unidentified people hired by Government's law-enforcement agencies and intelligence units have collected photos of female relatives of victims of enforced disappearances, photoshopping and publicising them in social media platforms to portray them as "prostitutes".

On 14 December 2022 the Ambassador of the United States to Bangladesh visited the residence of Ms. Sanjida Islam Tulee, the coordinator of Maayer Daak, with the objective of meeting 24 families of disappeared persons. However, from the night prior to the meeting, intelligence officers started making enquiries in the neighbourhood about Ms. Islam Tulee and members of her family, as well as about the nature of the visit of the Ambassador. In the morning prior to the meeting, Ms. Islam Tulee received a visit of the Officer in Charge of the Tejgaon Police Station, who questioned her about the meeting. In addition, 45 members of the Awami league, which is affiliated with the ruling party, gathered outside Ms. Islam Tulee's house, blocking the road, shouting slogans and making it difficult for the Ambassador's car to reach the residence. During the meeting with the families, the Officer in Charge of the Tejgaon Police Station entered temporarily in the residence. As more people were joining the meeting, the security personnel of the Ambassador asked him to leave. Of the 24 families participating in the meeting, 21 managed to leave and reach their homes, but three others had to remain at Ms. Islam Tulee's house due to concerns for their safety.

While we do not wish to prejudge the accuracy of these allegations, against the background of past similar information, we reiterate our concern about continued harassment and intimidation against Mr. Adilur Rahman Khan, Ms. Sanjida Islam Tulee, and the members of Odhikar and Maayer Daak. In this regard, these we reiterate our concerns in relation to what appears to be a emerging pattern of intimidation and harassment against relatives of disappeared persons, human rights defenders and civil society organizations working to clarify the fate and whereabouts of disappeared individuals³. This could indeed compromise the search and related efforts to seek truth and justice for the alleged enforced disappearance of individuals, as well as reparation for the harm suffered⁴.

We are also particularly concerned about the difficult situation in which local NGOs, such as Odhikar, are forced to work as the ongoing acts of intimidation, harassment and surveillance seem to obstruct their activities. In this connection, we express our concerns with regard to the particular situation of Mr. Khan and the intensified surveillance to which he is subjected by the national authorities, and which

³ JUA BGD 2/2022, p. 4.

⁴ Ibidem.

raises serious concerns with regard to his right to privacy.

In the same vein, we further express our grave concerns in relation to the intimidation, harassment, and stigmatization against the members of Maayer Daak. Such actions are an unacceptable attack against the honour and reputation of these mothers and wives, that humiliate them and have a particularly heinous nature. We regret that the authorities appear to have failed to protect the families of the disappeared from such acts, as well as to punish those responsible.

Furthermore, we remain concerned about the hate campaign by the Bangladeshi Media and high-profile governmental figures against Bangladesh-based human rights organisations. The smearing campaign against Odhikar is a clear attempt to question the credibility of the organization in its work related to enforced disappearances within the country.

Finally, we express our deep concern in relation to the inaccuracies disseminated on the WGEID and its work. In this regard, we note that there has been no statement from the authorities to clarify the inaccurate and misleading reporting concerning the WGEID's activities.

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 on the measures that your Excellency's Government has adopted to ensure the protection of the families of forcibly disappeared persons and of any person and association working in the effort to elucidate the fate and whereabouts of all the cases of enforced disappearance, including witnesses, individuals, journalists, lawyers, human rights defenders and other civil society actors.
3. Please provide detailed information on the measures adopted to investigate the alleged instances of harassment and smearing, identify those responsible and prosecute them. In the absence of any investigations by the competent authorities, kindly explain the reasons behind it.
4. Please provide detailed information on the steps taken to protect Mr. Khan and the members of Odhikar from acts of intimidation and harassment. Also, kindly explain on which grounds the State authorities have initially prevented Mr. Khan from boarding the plane to Bangkok.

5. Please provide information on the steps taken to investigate the acts of harassment against Ms. Sanjida Islam Tulee and the members of Maayer Daak. In particular, provide precise and detailed information about the measures adopted by the Government to protect the victims and punish those responsible.
6. Please indicate what measures have been taken to ensure that human rights defenders and members of civil society organisations in Bangladesh are able to carry out their legitimate work, particularly when attempting to establish the circumstances of enforced disappearances and the fate and whereabouts of disappeared persons, in a safe and enabling environment without fear of reprisals, acts of intimidation or harassment. In particular, please provide information on the safeguards provided by your Excellency's Government to ensure Mr. Khan, Ms. Islam Tulee and the members of Odhikar and Maayer Daak carry out their activities without hindrance of any sort.
7. Taking into account the inaccurate and misleading information on the Working Group's activities reported by some representatives of the Bangladeshi Government, the WGEID would like to reiterate its request for a meeting with Your Excellency's Government at Your earliest convenience in order to discuss these matters.

We would appreciate receiving a response within 60 days. Past 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 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.

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

Aua Baldé

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

Clement Nyaletsossi Voule

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and without prejudging the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to draw the attention of your Excellency's Government to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We recall that the Declaration sets out the necessary protection to be ensured by States regarding all persons deprived of liberty. In particular articles 7, 10, 12, 13, 16 of the Declaration establish that no circumstances whatsoever, may be invoked to justify enforced disappearances; to ensure access to a prompt and effective judicial remedy; to ensure competent national authorities have access to all places of detention; to ensure persons deprived of liberty be held in an officially recognized place of detention, and to be brought before a judicial authority promptly and after detention; to provide accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest; to ensure maintaining of an official up-to-date register of all detained persons in every place of detention; and authorities to suspend persons presumed responsible for such acts from any official duties during the investigation and try them only by the competent ordinary courts.

Furthermore, article 13 paragraphs 3 and 5 also provides that states shall take steps to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal and, that such acts or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

We also recall Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3) according to which:

- “64. In situations where relatives are afraid to file complaints, or individuals with important information refuse to testify, which can contribute to impunity, it is essential to provide adequate protection programmes and incentives for witness testimony, in compliance with article 13 (3) of the Declaration
65. It is of paramount importance to establish adequately funded institutions to protect and assist the victims, their families, witnesses and other stakeholders taking part in the investigation, including defendants that could present evidence. Furthermore, protection programmes should be established within functional independent institutions. It should be stressed that in many instances those who

perpetrated enforced disappearances continue to operate underground, even when transitional justice processes are taking place, and often retain the ability to cause damage to anyone who attempts to hold them to account. [...]

68. The physical and psychological security of the persons involved in the investigations is also important for the purposes of creating an environment in which the relatives and civil society can properly document cases and gather evidence. Although this can facilitate the attainment of results, it should not substitute the international obligations of States in this respect.”

Reference is also made to articles 17 and 19 of the Declaration. Article 17 of the Declaration stipulates that these acts shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclarified. Article 19 of the Declaration provides that victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. In the event of the death of the victim as a result of an acts of enforced disappearance, their dependents shall also be entitled to compensation.

We would like to refer also to the study on enforced or involuntary disappearances and economic, social and cultural rights (A/HRC/30/38/Add.5), in which the Working Group on Enforced or Involuntary Disappearances has highlighted that family members are often socially stigmatized and, in particular, women and recommended States to take measures to prevent and remedy the social stigmatization and isolation of disappeared persons and their family, by means of information and sensitization campaigns or other relevant measures.

We further refer to the General Comment from the Working Group on Enforced or Involuntary Disappearances regarding the Right to the Truth in Relation to Enforced Disappearances, which highlights that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. The State has the obligation to let any interested person know the concrete steps taken to clarify the fate and the whereabouts of the person. Such information must include the steps taken on the basis of the evidence provided by the relatives or other witnesses. The relatives of the victims should be closely associated with an investigation into a case of enforced disappearance.

Finally, we would like to refer to paragraphs 11, 12, 17, 35 and 36 of the General Comment on women affected by enforced disappearances adopted by the WGEID, concerning the stigmatization and the enhanced risks faced by women who are relatives of disappeared persons or members of organizations to establish the circumstances of enforced disappearances and the fate of disappeared persons. According to the General Comment:

- “11. Frequently, the mothers of persons who are disappeared are socially stigmatized by being blamed for not taking proper care of their disappeared children. This can lead to both community and family rejection and cause grave psychological and emotional trauma to the

mothers.

12. Family members' victimization becomes even greater when men, who mainly suffer the fate of enforced disappearances, were the head of household. Here, enforced disappearance of men results in entire families becoming victims of enforced disappearances. As the family structure is disrupted, women are negatively affected economically, socially and psychologically. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search for their loved ones. Furthermore, they do not know when—if ever—their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Therefore, economic and social marginalization is frequently the result of an enforced disappearance. In such circumstances, several economic, social and cultural rights enshrined in the Universal Declaration of Human Rights and in other instruments, such as the rights to health, education, social security, property and family life are violated.

[...]

17. Some States have responded to women's groups' and individuals' questions about their relatives by declaring all of those disappeared were presumed dead. While these measures may have some positive legal effects for married women, whose identity and assets are tied to their disappeared husbands, they also have other negative consequences for women's groups and individuals attempting to find the truth. These measures undermine the efforts of family members, disproportionately women, who are attempting to determine the whereabouts of their disappeared relatives. These laws present another obstacle for women's groups as the State can therefore claim to have resolved their issues. However, such processes and laws that involve presumptions of death, without any investigation, attempt to placate family members without actually addressing their concerns. Any measure that impedes women's searches for disappeared persons, without offering another viable course of action, is a violation of the obligations set forth in article 3 of the Declaration.

[...]

35. Limited access and exposure to public institutions affect the way women's groups find out about their relatives. Many women in search of information initially meet at hospitals, police stations or morgues, where they search for their relatives. When they decide to organize and challenge the State in regard to their relatives' disappearances, the traditional avenues of political action are often not available to them. As a result, many women's groups use public protest. This demonstrates that there is a need to help women to become accustomed to using public institutions. Thus, States should use legislative, administrative, judicial, and other measures to facilitate the activities of

individuals and grass-roots groups, which often provide the only voice for marginalized and previously apolitical women, in joining the mainstream political process, and in bringing their unique perspectives into the traditional realm of political life.

36. The State must take measures to prevent and combat reprisals, intimidation and threats, as well as the social stigmatization of women for their activism in response to enforced disappearances. The Working Group has observed that many women who are defenders and activists in the field of human rights, as well as relatives of disappeared persons, are frequently subjected to violence and are also victims of enforced disappearance”.

We also wish to refer to article 22 of the International Covenant on Civil and Political Rights (ICCPR, acceded to by Bangladesh on 6 September 2000), which guarantees the right to freedom of association. Pursuant to article 2 of the ICCPR, States have a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the respective Covenants, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenants and to ensure that the domestic legal system is compatible with the treaties.

Article 22(2) ICCPR provides that any restrictions must be “prescribed by law” and “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” For a restriction to meet the ICCPR requirement of being “prescribed by law,” it imposed must have a formal basis in law, as must the mandate and powers of the restricting authority. The law itself must be publicly accessible and sufficiently precise to limit authorities’ discretion and enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach. To meet the requirement that a restriction be “necessary in a democratic society,” the restriction must be least intrusive instrument among those which might achieve to one of the legitimate aims enumerated above. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition remaining a last resort. The word “necessity” means that there must be a “pressing social need” for the interference. When such a pressing social need arises, States must then ensure that any restrictive measures fall within the limit of what is acceptable in a “democratic society”. To conform to the principle of proportionality, any restriction must be appropriate and narrowly tailored to achieve their protective function. The onus of establishing the necessity and proportionality of the restriction always rests on the State.

Furthermore, we bring to your attention 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.