

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

Ref.: AL BGD 4/2023
(Please use this reference in your reply)

3 May 2023

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 51/8, 49/13, 43/4 and 52/4.

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 journalist Shamsuzzaman Shams Zaman. We are also writing about an investigation opened into editor Matiur Rahman. Mr. Shamsuzzaman Shams and Mr. Matiur Rahman are respectively journalist and editor for Prothom Alo newspaper, the country's largest daily news.

According to the information received:

On 26 March 2023, Mr. Shamsuzzaman Shams Zaman published an article about rising food prices in the country. The article was posted on social media with an erroneous child's photo to accompany a quote from an adult laborer about price hikes. Once the error was identified, the outlet removed the post and re-published the article on its website and on social media with a correction.

Three days later, on 29 March, a group of about 15 individuals in plain clothes identifying themselves as members of the police Criminal Investigation Department arrested Mr. Shams in his home. His laptop, phone and other equipment were seized during a house search. His whereabouts were unknown until later in the evening of that day.

Mr. Shams was later charged under sections 25(2), 26(2), 29(1), 31(2) and 35(1) of the Digital Security Act (DSA), which relate to: the publication or transmission of offensive, false, or threatening information; unauthorized collection or use of identity information; publication or transmission of defamatory information; publication or transmission of content that deteriorates law and order; and abetment of an offense, according to the first information report. The first four offenses carry prison sentences of three to seven years in prison and fines of 300,000 to 500,000 taka (US\$2,809 to US\$4,681). On 30 March, a court rejected Mr. Shams' bail. He was as a result sent to judicial custody.

On 29 March, in the evening, authorities opened another DSA investigation into Prothom Alo editor Matiur Rahman and an unnamed Prothom Alo photographer. All the accused in the second FIR are charged with

section 25(2)/31/35 of DSA. At the date this communication was prepared, no further information on the status of the investigation was available.

On 2 April, the High Court division granted Mr. Rahman anticipatory bail for six weeks and asked him to appear before the lower court, after six weeks. Mr. Shams was granted bail on 3 April by Dhaka Chief Metropolitan Magistrate.

We express our most serious concern at the reported arrest, detention and prosecution of journalist Shamsuzzaman Shams, as well as the criminal investigation against editor Matiur Rahman. We are concerned that these measures may have been taken in relation to the critical reporting of Mr. Shams. In particular, the circumstances for these arrest, charges and investigation give rise to grave concerns about the apparent weaponization of the current legislation to target critical voices. If confirmed, the facts alleged would appear to contravene, 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, which 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.

We are also seriously concerned that several journalists from Prothom Alo have reportedly been arrested and charged in recent months. These measures raise serious concerns for the safety of journalists of this particular outlet in particular, and for the state of media freedom in the country in general. In this context, we reiterate our most serious concerns about various provisions of the Digital Services Act, which do not appear to comply with international standards related to freedom of expression. We have previously raised concerns about various provisions of the Digital Security Act (BGD 4/2018), and we note that the UN High Commissioner for Human Rights has now called for an immediate suspension of this legislation.

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 abovementioned individual 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, detention and prosecution of journalist Shamsuzzaman Shams, as well as the investigation into editor Matiur Rahman. Please explain how these measures comply with articles 9 and 19 of the ICCPR. If the measures were to be inconsistent with article 19 of the ICCPR, please explain how your Excellency's Government plan to

redress their human rights.

3. In light of the UN High Commissioner for Human Rights' call for an immediate suspension of Digital Security Act, please indicate the measures taken or envisaged to protect individuals against the implementation of this legislation.
4. Please provide information about steps and measures your Excellency's Government has taken or is envisaging to ensure the Digital Security Act is in line with international human rights standards related to freedom of expression.

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.

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.

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.

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Michael Fakhri
Special Rapporteur on the right to food

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

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, 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

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 of the ICCPR. In addition, we would also like to draw the attention to the jurisprudence of the Working Group on Arbitrary Detention which stated that access to information or freedom of expression is the precondition to the fulfillment of all other rights in the democratic society. 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).

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

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

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).

In relation to the allegations indicating that Mr. Shams is being targeted because of his 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.