

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers

Ref.: UA BGD 6/2023
(Please use this reference in your reply)

26 July 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 44/5, 51/8 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the risk of imminent execution of [REDACTED], who has been sentenced for the crime of murder.**

This also has reference to previous communications, including BGD 1/2016 and BGD 5/2016 which raised similar concerns. We regret that to date we have not received a substantive response from Your Excellency's Government to these communications.

According to the information received:

[REDACTED] was charged for the killing of a senior professor at the Rajshahi University. The Speedy Trial Tribunal, in the case No. 38/2007, found [REDACTED] guilty of the crime and sentenced him to death on 22 May 2008. Later an Appeal was made to the High Court for revision and the verdict was upheld on 21 April 2013. The Supreme Court Appellate Division upheld the sentence on 5 April 2022. Immediately after a Review petition was lodged to the Supreme Court which was rejected.

We understand that after the dismissal of the review petition by the Supreme Court a Writ Petition was filed (No. 4301 of 2023) to the High Court which was forced to be withdrawn. An appeal to President of Bangladesh for a pardon or the commuting of the death sentence to life imprisonment was rejected. Two special petitions to the Chief Justice of the Supreme Court were sent, currently waiting for a response.

In the initial trial by the Speedy Trial Tribunal (Lower Court), three co-accused, including [REDACTED], were sentenced to death. The High Court upheld death sentences for two of the three convicted and the death sentence of the third individual was commuted to life imprisonment.

The conviction of [REDACTED] is reportedly based on a confession made by the other co-accused and on circumstantial evidence that do not meet the

evidentiary threshold of ‘beyond any shadow of reasonable doubt’. During the High Court proceeding no prosecution witness had seen [REDACTED] and his co-accused before, either on the day, or after the murder.

[REDACTED] has been spending more than 15 years in Rajshahi Central Jail on death row. He maintains his innocence and believes that he was wrongfully implicated in the case. He claims that he was not given an opportunity to adequately represent himself in the proceedings held before the High Court. He also claimed that [REDACTED] was tortured in police custody and that he did not receive a fair judicial trial due to his political affiliation with an opposition political party. His legal advisors were unable to raise genuine legal issues pertaining to the case during the trial processes due to undue pressures. The first lower court judge took leave of the case due to undue political pressure.

Rajshahi Central Jail authority has issued a notice indicating the imminent execution of [REDACTED].

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned at the risk of impending execution of [REDACTED]. In view of the irreversibility of the punishment of the death penalty, especially when serious doubts were raised concerning the fairness of the proceedings that led to the death sentence, we urge your Excellency’s Government to prevent the execution of [REDACTED]. If carried out, given the above indications, the execution would be inconsistent with standards of international human rights law, and amount to an arbitrary execution. We call upon your Excellency’s Government to commute the death sentence imposed against him and order the retrial of the case he highest upholding the highest judicial guarantees required under international human rights law in such cases.

Should the information received be confirmed, we note with highest concern that the execution of [REDACTED] might violate his right to life, liberty and security as set out in articles 3 and 9 of the Universal Declaration of Human Rights (UDHR); his absolute right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment under articles 5 and 10 of the same; and his right to a fair trial by an independent and competent court (articles 14). We note with concern the indication that a judge in the first instance court recused himself from participating in the proceedings because of alleged political pressure.

The death penalty has long been regarded as an extreme exception to the fundamental right to life, and in countries that have not abolished it, capital punishment may be imposed only following a trial that complied with the strictest fair trial and due process safeguards, as provided in articles 6(2) and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000.

Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that “Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which

gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.” Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

The Safeguards by the United Nations in 1984 provide that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that pardon or commutation may be granted in all cases of capital punishment.

We also draw the attention of Your Excellency’s Government that in the 40 years of experience of the Special Procedures mandate an extrajudicial, arbitrary or summary executions , and a careful review of numerous studies and evidence, the death penalty has never been proved to be an effective deterrent for crimes ([A/HRC/42/28](#)).

The General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para. 7) and most recently, in its resolution [A/RES/77/222](#) of 15 December 2022, called upon all States to respect the safeguards guaranteeing protection of the rights of those facing the death penalty. We reiterate that any measures to abolish the death penalty should be seen as progress towards the realization of the right to life and that, by extension, the resumption of executions results in less protection of the right to life.

The circumstances surrounding the imposition or execution of the death penalty can also constitute cruel, inhuman or degrading treatment or punishment or even torture. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment, particularly the so-called death row syndrome, may inflict pain and suffering on convicts and their relatives which reach the threshold of torture or other cruel, inhuman or degrading treatment or punishment (see the Report of the Special Rapporteur on Torture, A/67/279, para. 75).

The Human Rights Committee has held that “failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant” (CCPR/C/GC/36, para. 40). Moreover, “extreme delays in the implementation of a death penalty sentence, which exceed any reasonable period of time necessary to exhaust all legal remedies, may also entail the violation of article 7 of the Covenant, especially when the long time on death row exposes sentenced persons to harsh or stressful conditions, including solitary confinement, and when they are particularly vulnerable due to factors such as age, health or mental state” (CCPR/C/GC/36, para. 40).

In view of the urgency of the matter and the irreversibility of the execution of the death penalty, we respectfully call upon the highest authorities of the State to ensure [REDACTED] is not executed. His execution, on the

facts available to us, may constitute a violation of applicable international human rights standards and constitute an arbitrary execution. We urge the President of the People's Republic of Bangladesh and the executive branch of the State to consider granting clemency and commuting the sentence of [REDACTED].

We also reiterate our recommendation that Bangladesh reconsiders its longstanding position on the death penalty, which constitutes a per se violation of international law, considering the risk of unfairness often inherent to judicial procedures, and against mounting evidence of its ineffectiveness as a deterrent. We reiterate our recommendation that your Excellency's Government consider the adoption of a moratorium on all death sentences pending such necessary review.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the extent to which the imposition of the death penalty in the case of [REDACTED], in light of the alleged irregularities in his trial proceedings, is consistent with international human rights law, under ICCPR, CAT and the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty.
3. Please provide information about the claim that [REDACTED] was tortured or otherwise, ill-treated during investigation; that he complained about it during his trial; and that the judges seem to have ignored the claim. Please indicate what steps have been taken in this case, to assess the claim of torture, and the consistency of these steps with Bangladesh's obligations under the Convention against torture.
4. Please provide information about the conditions under which one of the co-defendants, whose confession reportedly implicated [REDACTED] into the alleged crime, was investigated by judicial investigators. Was he throughout interrogated in the presence of a defense lawyer of his choice?
5. Please provide information about the allegation that one of the judges in the first instance proceedings took leave of the case due to undue political pressure. What were the reasons for this decision?
6. Please also provide detailed information on how many individuals are currently held on death row, with disaggregated data according to sex,

age, and social background.

7. Please provide information on any efforts envisaged to reduce the scope of application of the death penalty.
8. Please provide detailed information on measures taken to protect those defending persons held on death row against any acts of intimidation, harassment, or reprisals.

While awaiting a reply, we ask that prompt steps be taken to stop the execution of the death penalty against [REDACTED]. In the light of this case, we also recommend that similar judicial process in capital punishment cases for drug related charges be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions.

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 allegation letter and the regular procedure.

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 wish to inform your Excellency's Government, that we may continue to publicly express our concerns in the near future about this case and other cases of judicial executions in Bangladesh, since these cases in our view merit prompt and undivided attention: [REDACTED] life is at stake, and his execution would be irreversible. We also believe that this is a matter of public concern and that the public should be informed about its human rights implications. Any public expression of concern from our part would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

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