

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL BGD 8/2023
(Please use this reference in your reply)

17 November 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/4, 51/8, 53/12 and 49/10.

In this connection, we would like to bring to the attention of Your Excellency's Government information we have received concerning the **alleged killing of eight individuals belonging to the Bawm indigenous community at Rowangchari Upazila in Bandarban on 6 April 2023.**

Reference is made to previous communications, including BGD 3/2022, sent by Special Procedures mandate holders to your Excellency's Government on 10 August 2022 concerning the alleged torture, ill treatment and subsequent death of Mr. Nabayan Chakma Milon, age 47, a political activist representing an indigenous community. We note with regret that your Excellency's Government has not responded to this previous communication.

According to information received:

It is reported that the Government of Bangladesh started a counter-terrorist operation in Bandarban district of Chittagong Hill Tracts (CHT) in October 2022, under the leadership of the Rapid Action Battalion (RAB), which is a unit of the Police. Since then, many individuals from the Bawm indigenous community have been displaced with roughly four to five hundred crossing the border to India.

It is further reported that since the end of March 2023, the Bangladesh Security agencies have worked with two armed groups, namely the United People's Democratic Front (UPDF- Democratic) and the Parbatya Chattagram Jana Samhati Samiti (PCJSS- Reformist) in the Rowangchari area to fight against the Kuki Chin Army (KNA). Both, UPDF (Democratic) and PCJSS (Reformist), were participating in raids against the KNA along with the Bangladeshi security forces.

The killing of Bawm Indigenous men:

On 4-5 April 2023, it is reported that a joint group of Bangladeshi government agencies, PCJSS (Reformist), and UPDF (Democratic) conducted a raid against the KNA in the Rowangchari area. In the early morning of 6 April

2023, around 25-30 armed cadres of UPDF (Democratic) started throwing grenades and encircled Jurbharang Para, a Bawm village. After that, they detained several males of the village, including elderly men and children. These captives were then brought into an open field at gunpoint and asked to lie on the ground. Men belonging to UPDF (Democratic) assaulted the detained men and asked them to identify who had connections or worked with the KNA. At some point, they released several of the elderly Bawm men. Later, they tied up 22 individuals and made them walk approximately 5-6 kilometres to the Khamtong Para Primary School at gunpoint. Reportedly, after intense interrogation and torture, a further 15 captives were released in the afternoon, leaving seven in detention.

The next day morning, on 7 April 2023, at around 7 a.m., the seven detained Bawm men along with another male from a separate village were lined up next to the Khamtong Para School's water tank and were executed. Later, the police arrived at the scene and took the remains of the eight deceased to the Bandarban General Hospital.

Later, in a press statement, the Inter-Services Public Relations Directorate (ISPR, the public relations division of the Bangladesh Armed Forces) said that "the eight persons who were killed in the recent gunfight between KNA and their opponents were identified as members of the armed terrorist group of KNA by their military uniform."

On 30 April 2023, it is reported that three other Bawm men were found dead near a small village in Rawangchari Upazila in Bandarban district. It is reported that the Police stated that these killings were a result of violence between different armed groups, a claim that is disputed.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by the alleged torture and summary execution of members of the Bawm indigenous community, as well as the failure to carry out an independent, impartial, prompt, thorough, effective, credible and transparent investigation into these killings and by the continuous use of violence by State and non-state actors against the indigenous Bawm community. We are also concerned about the ongoing and systemic discrimination against indigenous peoples in Bangladesh.

Should the facts alleged above be confirmed, they would amount to a violation of multiple provisions of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000, and the International Convention on the Elimination of Racial Discrimination (ICERD) acceded to by Bangladesh on 11 June 1979.

We note that under international human rights law everyone has the right to life and the right not to be arbitrarily deprived of his/her life (article 6 of the ICCPR). The right to life is a norm of customary international law and *jus cogens*, and no derogation may be made from it under any circumstances (article 4(2) of the ICCPR), including when countering terrorism. The State has a responsibility for protecting the lives of persons under any form of detention and for effectively investigating and remedying deaths in custody. As the supreme right, the right to life is precious for its own sake as inhering in every human being, but it also constitutes a fundamental

right, whose effective protection is the prerequisite for the enjoyment of all other human rights, and its content can be informed and infused by other human rights.

The right to life specifically requires the use of force by law enforcement officials to be graduated and proportionate, and any use of potentially lethal force must be strictly limited to self-defence or defence of others against an imminent threat to life, as a last resort when all other means, including non-lethal force, have been exhausted (A/HRC/43/46/Add.1, para. 45). The use of force must also accord with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

We remind your Excellency's Government that the United Nations Security Council and General Assembly have consistently affirmed that all measures to counter terrorism must comply with international law, including international human rights law and international humanitarian law. Any alleged death in the framework of a counter-terrorism operation must be individually investigated, regardless of whether the victim is a by-stander or an alleged "terrorist". When individuals have been, or appear to have been, killed, the State must conduct a prompt, independent and impartial fact-finding inquiry and provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that casualties have been sustained, including where the facts are unclear, the information is partial or circumstantial, and whether casualties were anticipated or not (A/HRC/29/51 58).

We underscore the importance of conducting investigations into all suspected unlawful deaths in line with international standards, particularly the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death of 2016).

Noting with extreme concern that the individuals were allegedly detained, before being executed, we emphasise that all individuals, regardless of the severity of the charges brought against them, have a right to a fair trial. We remind your Excellency's Government that article 14 of the ICCPR provides *inter alia* for the principle of equality before competent, independent, and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defence, and the right of accused persons to communicate with counsel of their own choosing. The right to a fair trial is recognized not only in human rights treaties but also under international humanitarian law, international criminal law, international counter-terrorism conventions and customary international law (see A/63/223).

We recall the responsibility of States to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and redress the harm caused by non-State actors. The State has a positive obligation to ensure the protection of rights of individuals against violations by its agents and by private persons or entities. The relevant obligations include identifying and bringing to justice those responsible through criminal investigation and prosecution in civilian courts; granting adequate reparation, including compensation to the victim(s) or their families; and taking steps to ensure the non-recurrence of such extrajudicial killings. In this respect we underscore the critical importance of the obligation to ensure in law and in fact the autonomy and independence of the authorities charged with the criminal investigation

and prosecution of these cases.

We reiterate that we stand ready to support Your Excellency's Government in its efforts to investigate these alleged crimes and remain available for any technical assistance we may be able to provide to the authorities concerned.

In this regard, we stress the importance that the investigation be conducted independently and impartially, and we are seeking assurances from the Government that the families of the victims will be protected against any retaliation.

We further underscore that indigenous peoples and individuals should be protected against discrimination as stated in the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007. The latter particularly enshrines the indigenous peoples' right to the full enjoyment of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Finally, we would like to draw the attention of your Excellency's Government to the States' obligations to provide victims of human rights violations with effective remedies. Victims of a gross violation of international human rights law must be guaranteed equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

In connection with the above alleged facts and concerns, please refer to the **Annex with 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 any comments you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any judicial investigation, or any criminal charges, prosecution, medical examinations, and other inquiries carried out in relation to the incidents of 4-5 April 2023 and 30 April 2023 in accordance with international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
3. Please provide information as to the measures taken to ensure the protection of the families of the victims.
4. Please specify the proceedings undertaken to hold both State and non-State actors accountable in connection with the alleged summary executions, in accordance with international human rights standards,

and provide further information on the identification and sanctioning of the possible perpetrators.

5. In case there has not been any progress in these investigations, please provide an explanation.
6. Please provide information on measures taken by your Excellency's Government to ensure non-recurrence of incidents as the one alleged above.
7. Please provide information on measures taken by your Excellency's Government to protect the rights of indigenous peoples in Bangladesh and ensure their continuous safety and security.
8. Please clarify what is being done to document and investigate alleged cases of torture or other cruel, inhumane, degrading treatment or punishment and how many perpetrators have been held accountable for their actions.

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.

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 to clarify the issue/s in question.

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

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Matthew Gillett

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

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

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Annex

Reference to international human rights law

In this connection, we wish to draw Your Excellency's Government's attention to article 3 of the Universal Declaration of Human Rights and article 6(1) of the International Covenant on Civil and Political Rights, ratified by Bangladesh on 6 September 2000, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

The Human Rights Committee in its general comment no. 6 notes that it considers article 6(1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces. In its general comment no. 31, the Human Rights Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities. A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 15).

These obligations arise notably in respect of criminal acts under international law, such as torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

We also wish to draw Your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), provide an authoritative interpretation of the limits on the conduct of law enforcement forces.

The previous Special Rapporteur on extrajudicial, summary or arbitrary executions in a report on armed non-State actors to the Human Rights Council (A/HRC/38/44) noted that "the State may be held responsible for the conduct of non-State actors when it can be shown that it has failed to exercise due diligence to prevent, investigate and respond to such conduct". This said, the Special Rapporteur reaffirms the centrality of States and their obligations under international law, including human rights law. This, however, does not mean that States are the only duty bearers. Whether derived naturally or from international legal sources, human rights are the entitlements of all humans. They are "inalienable" and thus sanctions ought to be applied against any State, group or person seeking to violate those rights. In addition to this, the report A/HRC/38/44 provides that States should "fully implement their obligation to protect against killings by armed non-State actors and evaluate current due diligence mechanisms in light of these actors' activities and

strengthen their implementation, in full respect of international human rights law”, as well as “Hold individual members of armed non-State actors to account under international human rights law and international criminal law, when applicable”.

We would like to refer Your Excellency’s Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide “effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats”. We would like to refer to Human Rights Committee general comment no. 36, wherein the Committee stated that the obligation upon State parties to respect and ensure the right to life extends to reasonably foreseeable threats, including those emanating from private persons and entities. The duty to protect the right to life requires State parties to take special protective measures for persons in situations of vulnerability who have been placed at particular risk because of specific threats.

We urge Your Excellency’s Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. In its general comment no. 36, the Human Rights Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates and should be independent, impartial, prompt, thorough, effective, credible and transparent.

We further wish to recall article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD), which guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before tribunals and all other organs administering justice. It also guarantees equality before the law, the security of the person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. It is noted that any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life constitute racial discrimination (article 1). In this sense, article 2 of the Convention requires States to implement affirmative measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, such as indigenous communities and individuals, with a view to guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007 provides in its article 1, that Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. This includes the rights to life, physical and mental integrity, liberty and security of person (article 7). It further provides in article 2 that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular based on their indigenous origin or identity. Additionally, it establishes that indigenous peoples freely determine their political status and freely pursue their economic, social and cultural development. The Declaration also determines, in its article 26, that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”.

We note that there is no internationally agreed definition of terrorism, and States may thus resort to establishing their own definitions. We stress, however, that your Excellency’s Government should ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act or terrorist organisation, or facilitating or funding terrorism, unless it can be shown that the person intended to participate in terrorism as defined under national law.

We remind your Excellency’s government that torture or cruel, inhuman or degrading treatment or punishment, is prohibited under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Bangladesh in 1998. We also remind you of the CAT obligation to protect alleged victims and witnesses who have made complaints of torture or other ill-treatment from intimidation or further ill-treatment for having made such a complaint (article 13), that all allegations of torture or ill-treatment shall be impartially and promptly investigated (article 12), and that victims are entitled to support and rehabilitation (article 14). We further underline the provisions of article 10 of the ICCPR, guaranteeing that all persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person.

Finally, we would like to draw the attention of Your Excellency's Government to States' obligations to provide victims of human rights violations with effective remedies. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed, equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.