

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL BGD 1/2024

(Please use this reference in your reply)

16 January 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 50/17, 51/8, 52/9, 52/4 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **widespread repression of civil society, human rights defenders, journalists, opposition members, and political activists prior to and during the elections on 7 January 2024.**

As Special Procedures mandate-holders, we have raised our concerns in the past about alleged attacks and excessive and lethal force, including by law enforcement, against protesters from the Bangladesh National Party (BGD 5/2022). We note that no response has been received to this communication and would welcome a response from Your Excellency's Government. We also raised concerns regarding: the alleged smear campaign against Bangladesh-based human rights organisation Odhikar and intimidation and harassment of its Secretary (BGD 4/2022); the prosecution of journalists (BDG 3/2023 and BDG 4/2024), and harassment and death threats against a lawyer, allegedly for his legitimate activities in exercise of the legal profession, including representation of opposition politicians (BGD 1/2023).

According to the information received:

In the months leading up to the elections, protests and violence were widespread across the country. Opposition parties and other political activists held anti-government protests, which were met with excessive and lethal use of force from police and repression in the form of violence and mass arrests and detention of opposition political leaders, protesters, and human rights defenders.

On 28 October 2023, the opposition party, the Bangladesh National Party (BNP) held a protest demanding the resignation of Prime Minister Sheikh Hasina and calling for free and fair elections under a caretaker government. There were violent clashes between protesters and police officers, with serious injuries sustained by protesters, journalists, and police, including the death of one police officer.

By mid-November 2023, approximately 10,000 major and local opposition leaders and political activists had been arrested, allegedly in an attempt to silence dissent ahead of the election. This includes several senior leaders of the BNP. Many others opposition actors have been forced to go into hiding to avoid arrest, amidst allegations of enforced disappearances and deaths in detention of opposition members. There were also reports of harassment and detention of family members of political activists when the authorities were unable to locate the persons they were seeking.

By 3 January 2024, it was estimated that approximately 25,000 opposition leaders and supporters had been arrested and continue to be detained in overcrowded prisons. It is estimated that these arrests include approximately 20,000 BNP leaders and supporters and 4,000 Jamaat leaders and supporters. In November and December 2023, at least 1,626 individuals associated with opposition parties received criminal sentences in relation to charges brought against them from 2010 to 2018, allegedly in rushed and late-night proceedings, raising concerns about fair trial and due process. Reports suggest that these detentions have been accompanied by denials of access to a lawyer and, for those charged with crimes, the inability to effectively prepare a defence.

At least eight BNP members have reportedly died in custody since 28 October 2023. No independent investigations have been launched into any of the deaths in custody.

The major opposition political party, the BNP, and some other political parties boycotted the elections, expressing lack of trust in the process.

Voters were reportedly pressured by candidates and law enforcement to vote, and were threatened with violence and/or the loss of their social protection benefits.

Since 28 October 2023, reportedly 56 people have died in election related violence, including alleged torture and deliberate denial of health care of political prisons, excessive use of force by law enforcement, suspected arson attacks, and other killings. Reportedly, there has been no accountability for these deaths, excessive use of force, or other human rights violations.

Without prejudging the accuracy of these allegations, we would like to express our deep concern about the highly repressive environment and the clampdown of dissent in which the elections on 7 January appear to have taken place, seriously undermining the right to public participation. We are deeply concerned about the potential impact this would have on weakening democratic processes and civic participation in the country. The alleged killings and attacks, criminal prosecution, arbitrary detention and intimidation of political opposition leaders and supporters, and other activists, protesters, members of civil society and human rights defenders would constitute serious human rights violations, including breaches of the rights to peaceful assembly and association and freedom of expression. In a highly polarized electoral environment, it is of utmost importance that the authorities conduct full independent investigations of such allegations to ensure justice, bring the perpetrators to account in open, fair trials and restore public confidence in the rule of law.

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 advise what steps your Excellency's Government is taking to investigate the reported use of excessive and lethal force and allegations of repression against political leaders and protesters in the lead up to the 7 January election.
3. Please advise what steps your Excellency's Government is taking to ensure accountability for serious violations against those who were exercising their right to peaceful assembly, association, or expression, in the lead up to and during the 7 January election, including the alleged deaths of political activists in custody.
4. Please provide information on the number of detained political activists, human rights defenders, and protesters in the context of the elections, since October 2023, how many of them have been charged and for what type of offence.
5. Please advise what steps are being taken to review all those detained in connection with the exercise of their rights to freedom of peaceful assembly, association or expression, and to ensure they are being lawfully detained and receive a fair trial in accordance with international human rights standards.
6. Please advise what steps your Excellency's Government is taking to ensure that individuals and groups, including those expressing dissent, are able to exercise their rights to freedom of peaceful assembly, of association and expression without fear of arrest or harassment, and to ensure law enforcement refrain from using excessive force in response to protests.
7. Please advise what steps your Excellency's Government is taking to ensure civil society, human rights defenders and the media are free to document and report on human rights in the country, to work to promote democratic freedoms, justice and accountability, in an enabling environment without intimidation, harassment or criminal prosecution.

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.

Further, 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.

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's to clarify the issue/s in question.

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

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

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

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh acceded on 6 September 2000.

We recall Article 19 of the ICCPR, which guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As interpreted by the Human Rights Committee in general comment no. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (paragraph 11) as well as expression of criticism or dissent.

According to Article 19(3) any restriction of the right to freedom of expression must be a) "provided by law"; b) "necessary" and c) for the purpose of protecting "the rights or reputation of others", "national security, public order, public health and morals". The Human Rights Committee has clarified that not only should the restrictions be enacted in law but that the language of the law should be clear, precise, accessible and predictable. Furthermore, "necessity" implies that the restrictions must be proportionate to the objectives to be achieved. In other words, the restrictions must be "the least intrusive instrument among those which might achieve the desired result." (Human Rights Committee, general comment no. 34, CCPR/C/GC/34).

Although Article 19(3) recognizes "national security" as a legitimate aim, national security considerations should be "limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a government, regime, or power group". States should "demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight" (A/71/373).

In its General Comment no. 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), or on discriminatory grounds, in violation of Article 2, paragraph 1, Article 3 or Article 26, are in principle arbitrary.

We also recall Article 21 of the ICCPR, which protects the right to peaceful assembly. The Human Rights Committee has confirmed that Article 21 'protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs' (CCPR/C/GC/37, para. 6). Restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-

determination. (CCPR/C/MDG/CO/4, para. 51). They should not be used to prohibit insults to the honour and reputation of officials or State organs” (CCPR/C/GC/37, para. 49).

We also recall Article 22 of the ICCPR, which protects the right to freedom of association, including civil society associations and political parties. The right to freedom of peaceful assembly and of association are pertinent to the democratic process, both during the election period and between elections. These rights are essential components of democracy since they empower women, men and youth to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable” (Council resolution 15/21, preamble)” (A/68/299, para. 5).

In its resolution 15/21, the Human Rights Council calls on States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections. In addition to the notion of democracy, the rights to freedom of peaceful assembly and of association are implicit in the right to take part in the Government of one’s country, as affirmed in the Universal Declaration of Human Rights, which states in Article 21(3) that “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. Similarly, Article 25 of the ICCPR affirms every citizen’s right without prohibited distinctions and unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in his country. The Human Rights Committee recognizes that the full enjoyment of those rights depends on the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives, which requires the free exercise of the rights to peaceful assembly and association, among other rights (General comment no. 25, para. 25). The General Assembly, in its resolution 59/201 declared that freedom of association and peaceful assembly were essential elements of democracy, together with the right to vote and to be elected at genuine periodic free elections, and encouraged the strengthening of political party systems and civil society organizations” (A/68/299, para. 12).

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. We would like to draw further attention to the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a) and (b), which provides for the right of all persons to meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly on 5 September 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials (para. 98).