

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA BGD 5/2016:

29 July 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 26/12, 26/7, 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged risk of execution of Mr. Mir Quasem Ali, following a trial that did not meet international standards of fair trial and due process.**

Mr. Mir Quasem Ali, a senior member of the Bangladeshi opposition party Jamaat-e-Islami, was arrested in June 2012 on the basis of a warrant issued by the Bangladesh International Crimes Tribunal on allegations of having committed crimes against humanity during the 1971 Bangladesh Independence War.

We are also drawing the attention of your Excellency's Government to four previous communications sent on 3 October 2012 (see A/HRC/22/67, case no. BGD 6/2012), 16 November 2012 (see A/HRC/22/67, case no. BGD 8/2012), 20 November 2015 (see A/HRC/31/79, case no. BGD 8/2015), and 8 April 2016 (case no. BGD 1/2016), in which serious concerns were expressed. In particular, concerns were raised regarding the lack of independence and impartiality of both the judges and prosecutorial services of the Bangladesh International Crimes Tribunal, as well as about serious allegations of unfair trial and lack of due process in the following cases before the Tribunal: Mr. Delwar Hossain Sayedee; Mr. Salauddin Quader Chowdhury; Mr. Motiur Rahman Nizami; Mr. Ghulam Azam; Mr. Muhammad Kamaruzzaman; Mr. Ali Ahsan Mohammad Mujahid; Mr. Abdul Kader Molla; Mr. Islam Azharul and Mr. Mir Quasem Ali. We thank your Excellency's Government for the reply received on 5 March 2013 to the communication BGD 8/2012. We regret that to date we have not received a substantive response from Your Excellency's Government to communications BGD 6/2012, BGD 8/2015 and BGD 1/2016.

In addition, Messrs. Ghulam Azam, Islam Azharul and Mir Quasem Ali were the subjects of opinion No. 66/2012 (A/HRC/2012/66) rendered by the Working Group on

Arbitrary Detention. In its opinions, the Working Group noted that the International Crimes Tribunal effectively reversed the burden of proof from the prosecution to the accused and made the pre-trial release on bail the exception rather than the rule. The Working Group thus considered the deprivation of liberty of the three persons, is arbitrary, and constitutes a breach of article 9 of the Universal Declaration on Human Rights (UDHR), and article 9 of the International Covenant on Civil and Political Rights (ICCPR).

According to the new information received:

Mr. Ali was tried at the Bangladesh International Crimes Tribunal (ICT) and sentenced to death on 2 November 2014. On 8 March 2016, the Appellate Division of the Supreme Court confirmed Mr. Ali's sentence to death handed down by the Bangladesh International Crimes Tribunal.

Mr. Ali's trial and appeal processes reportedly failed to meet international standards on fair trial and due process. Some of the violations include: failure to safeguard fundamental rights under the Constitution of Bangladesh; lack of fairness and transparency; lack of separation between the executive and the judiciary; lack of independence and impartiality of the judiciary; lack of independence of the prosecutor; widespread allegations of prosecutorial and judicial misconduct; repeated failure to investigate allegations of perverting the course of justice; explicit exclusion of domestic criminal procedural rules; and failure to properly define the crimes.

In particular, the final verdict of the ICT found Mr. Ali guilty of complicity in abetting and facilitating acts constitutive of crimes against humanity. However, he was sentenced to death for his "active participation". This violates the principle of certainty and clarity in charging, as Mr. Ali was sentenced for a more serious offense than was charged. Moreover, the ICT held that the plea of alibi had to be proven with absolute certainty so as to completely exclude the possibility of the presence of the accused elsewhere at the time of the crime, thus placing the onus of the proof on the defence to prove the accused's alibi beyond reasonable doubt"; thus violating the principle of presumption of innocence. During the appeal before the Supreme Court, the Chief Justice explicitly acknowledged numerous deficiencies in the investigation, as well as the insufficiency of evidence presented and the political nature of the trials.

On 24 August 2016, the Supreme Court is expected to conduct a review hearing. It is feared that the court will uphold the previous decisions, after which moment there will be no further bar to his execution. As previous cases have demonstrated, once the appellate process has been exhausted, individuals are executed swiftly.

The ICT has sentenced 17 individuals to death for crimes committed during Bangladesh's 1971 Independence war. In the past three years, five of those convicted and sentenced by the ICT have been executed.

We express grave concern at the death sentence and the possibility of the execution of Mr. Mir Quasem Ali following judicial proceedings at the ICT in Bangladesh that may not have fulfilled the most stringent guarantees of fair trial and due process for the imposition of the death penalty.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, we call upon your Excellency's Government **to take all necessary measures to halt the execution of Mr. Mir Quasem Ali if the review hearing confirms the death sentence**, which on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We further urge you in that case, to ensure that Mr. Ali's death sentence is annulled and that he is re-tried in compliance with international standards.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fact that the above allegations appear to be in contravention of the rights to life and security and not to be arbitrarily deprived of life, as set forth in articles Article 3 of the UDHR and 6 (1) of the International Covenant on Civil and Political rights (ICCPR), which Bangladesh acceded to on 6 September 2000. These allegations also seem to be in contravention of the right to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.

We would also like to recall that article 6.2 of the ICCPR provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court. Moreover, 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 following a legal process which gives all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Furthermore, article 6.4 of ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the death sentence may be granted in all cases.

In this context, we would like to call the attention of your Excellency's Government to the evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279). This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur on torture has called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 Mr. Ali in compliance with international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your observations on any additional information and any comment you may have on the above mentioned allegations.

We intend to 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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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