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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) BGD 10/2013

6 September 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the 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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Messrs **Adilur Rahman Khan** and **Nasiruddin Elan**, respectively Secretary and Director of Odhikar, a non-governmental organization which disseminates information relating to human rights and human rights abuses through monitoring and training projects. Odhikar was founded in 1995 and advocates for civil and political rights. It is a member of various international networks.

Mr. Adilur Rahman Khan was the subject of an urgent appeal sent on 14 August 2013 by the Chair-Rapporteur of 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 rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. He was also the subject of an urgent appeal sent on 14 March 2011 by 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. We regret that your Excellency's Government has not yet provided responses to the concerns raised in both letters.

According to the new information received:

On 4 September 2013, during a press conference, the police reportedly indicated that its Detective Branch had filed a charge sheet against Messrs Adilur Rahman Khan and Nasiruddin Elan, allegedly for violating Section 57 of the Information and Communications Technology Act (2006) entitled “Punishment for publishing fake, obscene or defaming information in electronic form”. This charge relates to the publication by Odhikar on 10 June 2013 of an investigative report on the 61 individuals who were allegedly killed by security forces on 5 May 2013 during a demonstration organized by Hefazat-e-Islam.

The police have issued an arrest warrant for Mr. Nasiruddin Elan, while Mr. Adilur Rahman Khan remains detained in Kashimpur prison. According to Section 57(2), Messrs Adilur Rahman Khan and Nasiruddin Elan are facing up to ten years imprisonment and a fine of up to Taka one crore (about 10,000 USD).

Serious concerns are expressed that the charge against Messrs. Adilur Rahman Khan and Nasiruddin Elan may be linked to their legitimate human rights activities and the exercise of their right to freedom of association within Odhikar. Similar concerns are reiterated about the physical and psychological integrity of Mr. Adilur Rahman Khan while in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee Mr. Adilur Rahman Khan's right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include 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 his choice.”

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade

unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Furthermore, we would 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

In addition, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 point 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”; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures “to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms”.

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 persons in compliance with the above 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 cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Adilur Rahman Khan. Please also confirm the legal basis of the charges against Messrs. Adilur Rahman Khan and Nasiruddin Elan. Please indicate how the detention of Mr. Adilur Rahman Khan as well as the charges against Messrs. Adilur Rahman Khan and Nasiruddin Elan are compatible with the abovementioned international human rights norms and standards, as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
3. Please explain what measures have been taken to guarantee the physical and psychological integrity of Mr. Adilur Rahman Khan while in detention.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While awaiting your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the abovementioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders