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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 14/2013

13 November 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 24/7, 16/4, 24/5, 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 Mr. **Nasiruddin Elan**, 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. Elan was the subject of an urgent appeal sent on 6 September 2013 by the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 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 take note of the letter of your Excellency's Government of 10 September 2013 acknowledging receipt of the said appeal.

According to the new information received:

On 11 September 2013, an arrest warrant was reportedly issued against Mr. Nasiruddin Elan for allegedly violating Section 57 of the Information and Communications Technology Act (2006) entitled "Punishment for publishing

fake, obscene or defaming information in electronic form”. It was reportedly issued in relation to the publication by the organization of an investigative report on individuals who were allegedly killed by security forces on 5 May 2013 during a demonstration organized by Hefazat-e-islam.

On 10 October 2013, the High Court Division of the Supreme Court granted Mr. Elan a no-arrest order for four weeks.

On 6 November 2013, Mr. Elan spontaneously surrendered before the Cyber Crimes Tribunal of Dhaka. His lawyers sought bail on his behalf before the Tribunal, in vain. Mr. Elan was subsequently arrested and incarcerated.

On 10 November 2013, Mr. Elan’s lawyers submitted a bail application on his behalf. The Judge of the Cyber Crimes Tribunal decided to examine this application on 17 November 2013. He also ordered that charges would be officially brought on that day against Mr. Elan, as well as Mr. Adilur Rahman Khan, Secretary of Odhikar, who was also arrested in relation to the publication of the aforementioned report, and also was the subject of the aforementioned urgent appeal sent on 6 September 2013.

Serious concerns are expressed about the incarceration of, and likely charges against, Mr. Elan which may be linked to his legitimate human rights activities while exercising his rights to freedom of association, and freedom of opinion and expression. Further concerns are expressed for his physical and psychological integrity while in detention. Finally, concerns are reiterated about the situation of Mr. Adilur Rahman Khan who also faces charges in relation to the publication of the aforementioned report by Odhikar.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Nasiruddin Elan is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We would also like to refer your Excellency’s Government to article 19 of the International Covenant on Civil and Political Rights, which provides that “[e]veryone 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.”

Similarly, we would like to refer your Excellency's Government to article 22 of the International Covenant on Civil and Political Rights, which provides that “[e]veryone

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.”

We would also 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”.

Furthermore, 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 Mr. Elan in compliance with the above international instruments.

Moreover, since 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please confirm the legal basis for the arrest and incarceration of Mr. Elan, and any charges brought against him. Please indicate how these measures are compatible with the aforementioned international human rights norms and standards, particularly on the right to freedom of association and of opinion and expression.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Elan are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged 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
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Margaret Sekaggya
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