

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Independent Expert on the promotion of a democratic and equitable international order

REFERENCE:
AL BGD 10/2018

31 December 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Independent Expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolutions 33/30, 35/15, 34/18, 34/5 and 36/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the smear campaign against human rights non-governmental organization **Odhikar** as well as harassment and acts of violence against its staff.

Odhikar is a human rights organization established in 1994, which seeks to promote and improve respect for human rights. Odhikar and its members have been the subject of twelve communications since 2007, most recently on 17 February 2017 (BGD 1/2017).

According to the information received:

In June 2013, Odhikar published a fact-finding report on the extrajudicial killings of 61 civilians at Shapla Chattar in Motijheel of Dhaka by security forces during a state-led operation in May 2013. They urgently called on the government to set up a committee of inquiry.

The government refused to set up a committee and claimed that no one was killed in the operation. The newspaper *Daily Janakantha* echoed the government's position, saying that the images that had appeared in the international media were of people who had made it appear as though they were killed by using red paint and lying on the ground.

On 11 August 2013, intelligence agency entered Odhikar's office and appropriated its computers, laptops and some other important documents without producing a warrant.

Since 2014, Odhikar's activities and financial clearances of their projects are no longer approved by the NGO Affairs Bureau (NGOAB). Odhikar applied for the renewal of its registration with the NGO Affairs Bureau on 25 September 2014 and it has been pending since then.

As a result, Odhikar's bank accounts have been frozen since 2014 and they have not been able to make bank transactions or receive any funds, which has severely limited the organisation's capacity to operate.

On 2 August 2015, the Media and Public Relations wing of the Police Headquarters in Dhaka referred to the list of extrajudicial killings, published in the newspaper *Daily Janakantha*, in a public statement. They suggested that the Odhikar's 2013 report could be considered a criminal act of defamation, as it affects the reputation and the credibility of the work of police.

In March 2016, a human rights defender associated with Odhikar was attacked and shot by the police.

On 16 June 2016, the Anti-Corruption Commission concluded the investigation into the allegations of corruption activities of Odhikar and settled the matter as 'kept in record'.

In February 2017, a human rights defender linked to Odhikar was shot dead allegedly by someone with strong links to the Awami League.

On 30 March 2017 a case was filed under Section 57(2) of the Information and Communication Technology (ICT) Act against two Odhikar human rights defenders, accusing them of publishing an offensive post from a fake Facebook account. They were arrested by police on the same day without a warrant but were subsequently released.

On 11 April 2017, a High Court Division Bench of Supreme Court granted anticipatory bail of both human rights defenders for four weeks. On 9 May 2017, both human rights defenders appeared before a magistrate in Kushtia and were remanded in pre-trial detention. They were released on bail on 29 May 2017, after 20 days of detention. The hearing of witnesses was due to take place on 12 September 2018, but did not go ahead due to the absence of witnesses. The next hearing is scheduled for the 12 September 2019.

On 12 April 2017, police arrested another Odhikar human rights defender for 'liking' news on Facebook. He was held in pre-trial detention for 21 days before being released on bail. Police submitted a charge sheet on 19 May 2017. He was acquitted on 31 May 2018.

On 6 November 2018, the Election Commission cancelled Odhikar's registration as election observer without previous notice, claiming that Odhikar cannot hold the position without being a member of the NGOAB.

On 11 November 2018, the report entitled 'Controversial organization Odhikar is again involved in murky activities' was published in the *Daily Janakantha*. On 13 November 2018, the report entitled 'Recommendations to stop all the activities of Odhikar' was released by the newspaper *Bangladesh Protidin*. On 16 November 2018, criticism of Odhikar's activities was also expressed by the reporter of the Channel I.

All the above-mentioned reports stated, inter alia, that Odhikar's activities should be immediately stopped and its finances should be frozen. It was further claimed that Odhikar has been involved in anti-state conspiracy, dissemination of false information concerning national elections and human rights situation in Bangladesh. Moreover, it was reported that even though Odhikar's bank account is blocked, the organization has received money from different donor agencies.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern regarding them, which appear to be a consequence of the organization's peaceful and legitimate attempts to document and expose human rights violations in Bangladesh. We emphasize our concern at the alleged smear campaign against Odhikar and at the alleged acts of violence against their members, including an attack on one human rights defender and the killing of another.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Kindly provide information regarding the alleged violations against Odhikar, including the alleged illegal raid of their offices, the freezing of their bank accounts, the lengthy delay and de facto on-renewal of their registration with the NGO Affairs Bureau, the arrest of their members under the ICT Act, their inability to serve as duly registered election observers, and the alleged smear campaign against them.
3. Please provide detailed information on the steps taken by your Excellency's Government to conduct thorough, prompt and impartial investigations and prosecution into the allegations of a killing of a Odhikar

human rights defender by police in March 2016 and of an Odhikar-affiliated human rights defender in February 2017. If no investigation has taken place into their deaths, kindly provide information as to why.

4. Please indicate what measures have been taken to ensure that human rights defenders in Bangladesh are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any kind, in particular during the current electoral period.

We would appreciate receiving a response within 60 days. Passed 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice 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.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 6, 7, 9, 17, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000, which states that everyone shall have the inherent right to life, that no one shall be subjected to inhuman or degrading treatment, that everyone has the right to liberty and security of person, that no one shall be subjected to unlawful attacks on their reputation, and the right to freedom of expression, including the freedom to seek, receive, and impart ideas, either orally, in writing or in print or through any other media of his choice; and that the right to peaceful assembly shall be recognized and everyone shall have the right to freedom of association with others.

We also wish 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2, which states that everyone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and that the State has a prime responsibility and duty to protect, promote and implement all human rights. We would also like to draw attention to article 5, 6 and 12. Article 5 and 6 state that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights. While according to article 12, the state shall take all necessary measures to ensure the protection by the competent authorities of everyone, against any arbitrary action as a consequence of the legitimate exercise of their human rights.

We further refer your Excellency's Government to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which reminds States of their obligation to respect and protect the right of all individuals, including human rights defenders, to associate freely, online as well as offline, seeking to promote these rights. States should take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with their obligations under human rights law.

We further wish to recall that, according to article 9 (1) and (2) of the Covenant, “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Therefore, for deprivation of liberty to be considered lawful and not arbitrary, established legal procedures and guarantees must be respected, such as the fact that evidence must be obtained by following legal procedures. Moreover, in order for a deprivation of liberty to have a legal basis, the authorities must invoke that legal basis and apply it to the circumstances of the case

through an arrest warrant (A/HRC/WGAD/2018/36). In this view, we remind that “[o]ne major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded. The reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The “reasons” concern the official basis for the arrest, not the subjective motivations of the arresting officer” (CCPR/C/GC/35, para.25).