

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL BGD 6/2021
(Please use this reference in your reply)

7 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 43/16, 45/3, 41/12 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ongoing judicial harassment against Mr. Adilur Rahman Khan and Mr. Nasiruddin Elan, respectively Secretary and Director of the human rights non-governmental organisation Odhikar. Mr. Adilur Rahman Khan is also a member of the World Organization against Torture's (OMCT) General Assembly, and Secretary-General of the International Federation for Human Rights (FIDH). Odhikar was founded in 1995 and advocates for civil and political rights, and reports on enforced disappearances. It is a member of various international networks.

Mr. Adilur Rahman Khan was previously the subject of several communications sent to your Excellency's government, including BGD 9/2013, BGD 10/2013, BGD 15/2013 and BGD 2/2014. Mr. Nasiruddin Elan was previously the subject of communications BGD 10/2013, BGD 15/2013 and BGD 14/2013. We regret that apart from two procedural replies received (to BGD 10/2013 and 14/2013), to date no substantive responses have been received to the allegations transmitted by Special Procedures mandate holders.

Odhikar has been the subject of a number of communications from Special Procedures mandate holders, including BGD 10/2018, BGD 1/2017, BGD 6/2015 and BGD 5/2015.

The case of Mr. Adilur Rahman Khan and the NGO Odhikar was included in the 2020, 2019 and 2011 reports of the Secretary-General on cooperation with the UN in the field of human rights on alleged accusations of anti-State and anti-Government activities following their engagement in the first cycle of the UPR of Bangladesh in 2009. Odhikar has continued to engage with the UN, including by submitting joint reports to the 2013 and 2018 UPRs of Bangladesh and to the Committee against Torture in 2019. Mr. Khan and Mr. Elan reportedly filed a Criminal Appeal before the High Court Division against the charges brought against them, which was dismissed. They subsequently filed an appeal with the Appellate Division of the Supreme Court, which on 14 February 2021 rejected the petition and sent the case to the Cyber Crimes Tribunal. As of May 2021, the case remained under appeal (A/HRC/48/28, Annex II paras. 9-10).

According to the information received:

On 9 November 2021, the Cyber Tribunal of Dhaka resumed its examination of prosecution witnesses in the case brought against Mr. Adilur Rahman Khan, and Mr. Nasiruddin Elan in Case No. 1 of 2013. The case was filed against the Mr. Khan and Mr. Elan in relation to a fact-finding report issued by Odhikar documenting extrajudicial killings by security forces and law enforcement agencies during a protest in May 2013.

Following the publication of Odhikar's fact-finding report in 2013, Mr. Adilur Rahman Khan and Mr. Nasiruddin Elan were arbitrarily detained for 62 and 25 days respectively, before they were both released on bail on 11 October and 1 December 2013. Odhikar's registration has not been renewed since 2015 by the NGO Affairs Bureau, its bank accounts have been frozen and it has been forbidden to receive foreign funding.

Rather than dropping the case, the police brought new charges against Mr. Adilur Rahman Khan and Mr. Nasiruddin Elan under Section 57 of the Information and Communication Technology (ICT) Act, 2006 (amended in 2009), 'for publishing fake, obscene or defaming information in electronic form'.

On 14 February 2021, the Appellate Division of the Supreme Court of Bangladesh rejected Odhikar's appeal to quash the cybercrime case on its legal merits. On 12 September 2021, the Cyber Tribunal of Dhaka resumed the trial in the case against the two defenders and on 5 October 2021, it started to examine prosecution witnesses in the case. If found guilty, Mr. Adilur Rahman Khan and Mr. Nasiruddin Elan could each face up to seven years' imprisonment.

Reportedly, when Mr. Khan and Mr. Elan's lawyers sought permission from the court to separately examine the prosecution witness who testified against the two defendants on 5 October 2021, the court merely replied that the witness could be called at a later date to be cross-examined.

Without wishing to prejudge the accuracy of the information received, we wish to express our concerns at the ongoing judicial harassment of Mr. Adilur Rahman Khan and Mr. Nasiruddin Elan, for their legitimate activities in defence of human rights. We are further concerned that since when the case was transferred to the Cyber Tribunal of Dhaka in January 2017, the latter has failed to uphold fair trial principles. We are also particularly concerned by the lack of transparency regarding the publicity of its decisions. We further express our continued concerns at the attacks, surveillance, smear campaigns and harassment against Odhikar since the publication of the 2013 report, including that Odhikar's registration has not been renewed by the NGO Affairs Bureau of the Government of Bangladesh and is still pending since 2015.

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 provide information on the factual and legal bases for the charges against Mr. Adilur Rahman Khan and Mr. Nasiruddin Elan, and how they are in compliance with Bangladesh's obligations under international human rights law.
3. Please provide information on what measures have been taken to ensure fair trial guaranteed in the context of the ongoing proceedings against Mr. Khan and Mr. Elan, including ensuring access to trial documents and procedural decisions, and allowing their legal representatives to acquire in a timely manner information on prosecution witnesses and to separately examine them,
4. Please provide information on the reasons for the lack of renewal since 2015 of Odhikar's registration as an NGO by the NGO Affairs Bureau
5. Please indicate what measures have been taken to ensure that human rights defenders and civil society organizations 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Diego García-Sayán
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 draw your attention to articles 2 (3), 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000, which state that every person has the right to an effective remedy; the right to a fair trial and entitled to a fair and public hearing by a competent, independent and impartial tribunal; 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.

Article 19 of the ICCPR protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, General Comment no. 34, para. 11). Under Article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We also wish to refer to Human Rights Council Resolution 22/6, which calls upon States to ensure that “procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law” (A/HRC/RES/22/6, para. 8).

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 make reference to the 1992 Declaration on the Protection of all Persons from Enforced Disappearance which requires states to State ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation (paragraph 1). States must also ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits (paragraph 2). Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished (paragraph 5).

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.