



September 11, 2013

Sheikh Hasina Wazed
 Prime Minister
 Government of the People's Republic of Bangladesh
 Old Sangsad Bhaban
 Tejagaon
 Dhaka-1215
 Bangladesh

Via Facsimile 880 2 8113244

Re: Continued Detention of Advocate Adilur Rahman Khan

Dear Prime Minister,

We are writing to express our deep concern over the arrest of Adilur Rahman Khan on August 10, 2013 and his continued detention in connection with his work in the defense of human rights. We urge the relevant authorities to release Mr. Khan immediately and drop all charges.

Adilur Rahman Khan is one of Bangladesh's most prominent human rights defenders and the Secretary of Odhikar. He is also a member of the General Assembly of the World Organisation Against Torture (OMCT); member of the Executive Committee of the Asian Forum for Human Rights and Development (FORUM-ASIA); and a board member of the Asian Network for Free Elections (ANFREL). Odhikar is also a member organization of the International Federation for Human Rights (FIDH) and an affiliate of the International Commission of Jurists (ICJ).

Odhikar and Mr. Khan have long campaigned against extrajudicial killings, disappearances, torture, and violations of the rights to freedom of expression, assembly and association, including when members of your party, the Awami League, were being persecuted under the

previous caretaker government. It is sad and ironic that your government is now prosecuting Mr. Khan for his work in documenting human rights violations.

Mr. Khan's arrest and subsequent detention under the Information and Communication Technology Act, 2006 appears to be aimed at intimidating and silencing critics of your government. The recent move by the government to amend the Information and Communication Technology Act, 2006 to increase sentences, make certain offenses non-bailable, and authorize the police to arrest without obtaining a warrant deepens our concerns that Mr. Khan's arrest is designed to silence him, Odhikar, and other critics.

According to the police, Mr. Khan was arrested pursuant to section 54 of the Code of Criminal Procedure and section 57 of the Information and Communication Technology Act, 2006. On August 11, the day following his arrest, Mr. Khan was presented before the Magistrate's Court and was remanded to five days police custody for alleged offenses under section 54 involving clauses 1 and 2 of Section 57 of the Information and Communication Technology Act (ICT) 2006 for publishing in an Odhikar fact-finding report allegedly false images and information about human rights abuses by government security forces during mass demonstrations by the Hefazat-e-Islami movement in Dhaka on May 5 and 6, 2013. Odhikar's report stated that 61 persons had been killed in operations by security forces between May 5-6, a figure that is strongly contested by your government.

Mr. Khan was not given access to lawyers until he was produced before the Magistrate on the afternoon of August 11. The August 11 remand order was subsequently overturned by the High Court Division of the Bangladesh Supreme Court on August 12. Mr. Khan was sent to the Dhaka Central Jail on August 13, and later transferred to the Kashimpur Jail number 1. We ask you to ensure that Mr. Khan is kept safe and afforded all of his human rights while in the custody of government authorities.

The charges against Mr. Khan and his Odhikar colleague, ASM Nasiruddin Elan, submitted through a charge sheet by the DB Police on September 4, 2013, are a serious encroachment on their and other members of Odhikar's right to freedom of expression, and will have a chilling effect on other human rights defenders and other critical voices throughout Bangladesh.

The case was transferred to the newly-formed Cyber Crimes Tribunal. We are disturbed that the second bail petition submitted by Mr. Khan's lawyers was rejected by the court on September 9.

We remind you that Bangladesh is a party to the International Covenant on Civil and Political Rights (ICCPR). Under Article 19 of the ICCPR, everyone has the right to freedom of expression, including the right to seek, to receive, and to impart information. As the UN Human Rights Committee has consistently underscored, laws restricting this right must never be invoked to prosecute human rights defenders for disseminating information of legitimate public interest.

As the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), makes clear under Article 12, the State must take all necessary measures to ensure the protection of human rights defenders from any violence, threat, retaliation pressure or any other arbitrary action as a consequence of the legitimate exercise of rights, including the freedom of expression.

We urge you to take immediate measures to uphold Khan's rights under Articles 7, 9 and 14 of the ICCPR, which concern respectively his right to be free from torture and ill-treatment, his right to liberty and his right to a fair trial. Specifically Khan must be presumed innocent until proven guilty; be informed promptly of the charges against him; have access to a lawyer of his choice; receive a pre-trial release or a hearing to challenge pre-trial detention without delay; receive a public hearing before an impartial, independent tribunal established by law; and be protected from being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

We are greatly concerned that Foreign Minister Dipu Moni, when speaking to the diplomatic corps in Dhaka on August 19, 2013, stated that any international presence in court during proceedings against Mr. Khan amounted to "direct interference with" and intimidation of our judicial process. In accordance with ICCPR article 14, trials must be conducted transparently and must be open to the public. We call on you to publicly retract this statement, and to make clear that observers, whether national or international, are welcome to monitor proceedings against Mr. Khan. We are also concerned that speaking in Washington, D.C. on September 5 she said that the government accepted criticism, but not "undue" criticism. Nothing in international law allows a government to penalize "undue" criticism. We remind you that your party complained bitterly about restrictions on free expression while serving as the parliamentary opposition to previous governments.

In official statements, members of your government stated that Mr. Khan was arrested because Odhikar refused to share information about the report, and claimed that therefore the report is not credible. Odhikar cited a fear of government intimidation or retaliation against the victims' families as the reason that it has not given the information directly to the government. Human rights organizations, like journalists, should be able to maintain confidentiality in respect of sources information in order to carry out their essential functions.

Odhikar did agree to share their list of victims' names and addresses with an independent commission, which Odhikar is urging the government to establish, under the Commission of Inquiries Act 1956, to look into the events of that night. Given the well-documented history of torture and ill-treatment by Bangladesh security forces against persons who report government abuses, this request is eminently reasonable.

We understand that the relevant authorities are continuing to search for the Odhikar list. We are concerned about the police raid on Odhikar's offices on the night of August 11 during which authorities seized computers and documents containing, *inter alia*, confidential

material and which might contain this list of victims and their contact details, in whatever form.

The seizure of these materials constitutes a grave violation of the right to privacy, guaranteed under Article 17 of the ICCPR, of the victims and witnesses who have trusted Odhikar with their information. We urge you to immediately issue instructions to the authorities examining the computers to safeguard all personal information and identifying details found on the computers including that of victims and witnesses, as well as involved Odhikar staff members and to ensure that no harm comes to those who are named in the computers or other confiscated materials.

Shortly after Mr. Khan's arrest your cabinet approved amendments to the Information and Communication Technology Act, 2006. We understand that the amendments would make some offenses non-bailable and would empower law enforcement officials to arrest persons without a warrant. The amendments, as reported, also set a minimum punishment of seven years imprisonment for any offences, regardless of the seriousness or nature of the offense, and that the maximum punishment under the Act has been extended from 10 years to 14 years. At the outset, we express serious concerns relating to the form and substance of these amendments as reported, which will seriously hinder the exercise of freedom of expression. Further, we remind you that international law prohibits the application of new laws retroactively. Any retrospective application of these amendments would constitute a violation of Article 15 of the ICCPR.

We urge your government to reconsider its approach in this case and that you take all measures necessary to:

- Ensure Mr. Khan's immediate release, drop all charges against him, and end the harassment of Odhikar and other human rights defenders or critics of the government exercising their right to freedom of expression;
- Ensure that the physical and psychological integrity of Mr. Khan is protected at all times and that he is safe from torture and any other cruel, inhuman and degrading treatment while detained, whether in jail or any other place of detention;
- Ensure that Mr. Khan has ongoing privileged and confidential access to lawyers of his choice with whom he is able to communicate privately in confidence, and that any trial that may take place against him is open to the public, including to international observers;
- Return all material confiscated from Odhikar's offices and issue instructions that confidential information contained in those materials are to be safeguarded;
- Ensure that the confidential information is not used to further harass or intimidate anyone at Odhikar, or those who provided them any information;
- Reconsider and retract the amendments to the Information Communication and Technology Act 2006, and ensure that the amended provisions are not applied retroactively and take steps to ensure that its provisions will not be abused in the future.

If your government does not agree with the claims of Odhikar or any other group, the appropriate response is to engage in a public debate. Criminal sanctions for peaceful expression are not acceptable in a democratic society. Arresting those who disagree with government views suggests that Bangladesh is heading in a dangerous and authoritarian direction. This is in direct contradiction to pledges you and members of your government made to the Bangladeshi people and international community upon taking office after the repressive period of the prior caretaker government.

Thank you for your attention and we look forward to receiving a written response from you on this important matter.

Sincerely yours,

Anoop Sukumaran, Coordinator
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Suhas Chakma, Director
Asian Center for Human Rights (ACHR)

Evelyn Serrano, Executive Director
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