

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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10 September 2013

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Ministry of Home Affairs,
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Mr. Hasan Mahmud Khandaker, Inspector
General of Police,
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Re: Arbitrary arrest and detention of Mr. Adilur Rahman Khan, Secretary of Odhikar; search and seizure of documents and computers from Odhikar offices, and allegations against Odhikar's Director, Mr. A.S.M. Nasiruddin Elan

Dear Prime Minister; Ministers of Home Affairs; Law, Justice and Parliamentary Affairs, and Inspector General of Police,

Lawyers Rights Watch Canada (“LRWC”) is a committee of Canadian lawyers providing support internationally to lawyers and other human rights advocates whose rights, safety, or independence are threatened as a result of their human rights advocacy.

This letter follows up on our recent letter of Monday August 12th, 2013 concerning the arrest and detention on August 10, 2013 of Mr. Adilur Rahman Khan, Secretary of the Bangladesh human rights non-governmental organisation Odhikar. LWRC is writing to you to express our grave concern over the ongoing and arbitrary detention of Mr. Adilur Rahman Khan since that date. We understand that since his arrest, charges have been laid under Section 57 of the Information and Communication Technology (ICT) Act which criminalizes and provides a maximum 10 year sentence for, “publishing false images and information” and “disrupting the law and order situation of the country”. On 19 August, the Cabinet approved amendments to this section that increase the maximum penalty to 14 years, make offences non-bailable and allow arrest without warrant for anyone accused.

LRWC regards the charges against Mr. Khan as a misuse of the criminal law and criminal justice system to prevent investigation of acts and omissions of government agents alleged to have caused or contributed to the deaths and injuries to participants in a protest by Hifazate Islam on May 5 and 6, 2013 in the Motijheel area of downtown Dhaka. The Government of Bangladesh has failed to initiate a competent and independent investigation of these deaths and injuries; a duty that arose as soon as each death and injury occurred. Bangladesh's duty to investigate was made more urgent by the publication of Odhikar's 10 June 2013 report, [*Assembly at Hefazate Islam Bangladesh and Human Rights Violations*](#) which confirmed 61 deaths and many injuries. Odhikar declined to give police a complete list of identified victims but offered to provide this information to an independent commission of inquiry. Instead of adhering to the urgent duty to ensure an independent investigation, as called for by Odhikar, Bangladesh authorities conducted an unwarranted investigation of Odhikar's office (11 August), arbitrarily arrested (on 10 August) and criminally charged the Secretary of Odhikar, and are threatening similar criminal charges against Odhikar Director, Mr. A.S.M. Nasiruddin Elan.

The approval of the charges against Mr. Khan appears to contravene the provisions of the United Nations Guidelines on the Role of Prosecutors which impose on prosecutors duties to protect the interests of the public and to "give due attention to crimes committed by public officials" (Articles 13 (b), 16) and on states, the duty to ensure that prosecutors are able to perform their duties without improper interference (Article 4).

LRWC is deeply concerned at: a/ the ongoing and arbitrary detention of Mr. Adilur Rahman Khan; b/ the threat of arrest of Mr. A.S.M. Nasiruddin Elan, and, c/ the seizure of documents and electronic equipment from the Odhikar office by the DB of Dhaka Metropolitan Police. While LRWC is not privy to whatever "evidence" has been proffered in support of these serious charges, under the circumstances we believe the charges have been brought for the highly improper purpose of retaliation by State authorities against Odhikar for their legitimate investigation, reporting and advocacy on human rights issues in Bangladesh.

Irrespective of the bona or mal fides of the charges, Mr. Adilur Rahman Khan is entitled to the presumption of innocence and to release pending trial pursuant to the provisions of the International Covenant on Civil and Political Rights (ICCPR) to which Bangladesh is a party. Bangladesh is obliged by law to release Mr. Khan unless there is proof of a substantial risk that Mr. Khan would fail to appear in court as directed or be a danger to the public, or interfere with the integrity of the legal system, and there is no reasonable alternative to imprisonment that could prevent these proven dangers. We also point out that international human rights law requires a fair trial before a competent, independent and impartial court and that no conviction may be entered without evidence of guilt beyond a reasonable doubt.

The information we have received suggests that the charges against Mr. Adilur Rahman Khan are related to his work as a human rights defender and constitute an unwarranted punishment of his right to freedom of expression. The right and duty of Mr. Adilur Rahman Khan and other human rights defenders to protect human rights (Article 1) and, in so doing, to collect and disseminate information on issues of public interest is confirmed by the Declaration on Human Rights Defenders, Articles 6 (c), 8.2, 9.2, 9.2 (c), 12.3, 13, 18.2)

LRWC requests that steps be immediately taken to:

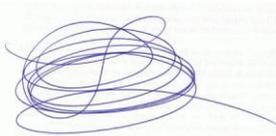
- Ensure the pre-trial release Mr. Adilur Rahman Khan in accordance with international law;

- Ensure the withdrawal of all unfounded charges and false allegations against Mr. Adilur Rahman Khan and Mr. A.S.M. Nasiruddin Elan;
- Ensure that all judges, prosecutors and other officials in this case are properly mandated and empowered to act independently and impartially in accordance with the law, including all international obligations arising from or recognized by, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Basic Principles on the Independence of the Judiciary;
- Ensure that Mr. Adilur Rahman Khan is provided with proper and adequate medical attention, and ensure the physical and psychological safety and wellbeing of Mr. Adilur Rahman Khan while in custody.

LRWC also urges your government to ensure the safety of all human rights defenders advocating for human rights in Bangladesh, and an immediate halt to all forms of intimidation and harassment of human rights defenders in Bangladesh including journalists and others calling for adherence to Bangladesh's international and domestic law obligations.

We look forward to your prompt response to the matters raised in this letter.

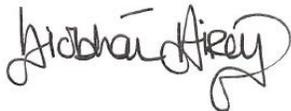
Yours sincerely,



Gail Davidson, Executive Director, LRWC



Catherine Morris, BA, LLB, LLM
Member, LRWC



Siobhan Airey, M.Sc., LLM, PhD candidate.

Copied to:

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