

# No. 37/2013 (Bangladesh)

## Communication addressed to the Government on 3 September 2013

### Concerning Adilur Rahman Khan

**The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

#### **Submissions**

##### *Communication from the source*

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:
4. Adilur Rahman Khan is a national of Bangladesh. He is the Secretary of Odhikar, a non-governmental human rights organization based in Dhaka 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. Mr. Khan is also a member of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH); he is a lawyer at the Supreme Court of Bangladesh and a former Deputy Attorney General.

5. The case of Mr. Khan is the subject of an urgent appeal issued on 14 August 2013 by 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, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Mr. Khan was also the subject of an urgent appeal by 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, issued on 14 March 2011.

6. According to the information received, on 10 August 2013 at 10.30 p.m., Mr. Khan was reportedly arrested at his home in Dhaka by a group of eight or nine men in plain clothes who identified themselves as officers from the Detective Branch of Dhaka Metropolitan Police. He was taken into custody without an arrest warrant, and was refused access to a lawyer. His family, colleagues and lawyers were not informed of his whereabouts.

7. The arrest was reportedly made on the basis of two "General Diary" complaints pursuant to section 44 of the Police Act, 1861. General Diary number 268, dated 10 August 2013, was filed by the Detective Branch of Police (North) and signed by Mohammad Ashraf Islam, ID 7199042827, Team 8, Detective Branch Police (North), Dhaka Metropolitan Police. The second complaint, number 514 of 10 August 2013, was lodged in Gulshan Police Station.

8. At 12.30 a.m. on 11 August 2013, Mr. Khan's wife, Saira Rahman Khan, and Odhikar representatives went to the Detective Branch office at Mintoo Road, Dhaka, but were denied entry. Odhikar representatives then attended Gulshan Police Station at 2.00 a.m., but police officers present stated that they knew of no case against Mr. Khan and that they had learned of the arrest from the media. At 3.00 a.m., Ms. Khan attended Gulshan Police Station and attempted to file a "General Diary" complaint concerning the alleged arbitrary arrest of her husband. The duty officer reportedly refused to accept the complaint, stating that the case was "sensitive". The Officer in Charge also refused to accept the complaint.

9. At approximately 1.20 p.m. on 11 August 2013, Mr. Khan appeared before the Chief Metropolitan Magistrate Court. It is reported that the charges held against him include fabricating information about atrocities committed by State security forces in a government crackdown in 2013. He has reportedly been charged with offences under Section 54 of the Criminal Procedure Code and the Information and Communications Technology Act (2006), sections 57 (1) and (2), which are related to the publication by Odhikar on 10 June 2013 of an investigative report on the 61 individuals who were allegedly killed by security forces on 5 May 2013 during the demonstration organized by Hefazat-e-Islam. During the hearing, the public prosecutor stated that the photographs published by Odhikar on its website were falsified and that the figures of casualties during the said demonstration were incorrect.

10. The complaint was provided to Mr. Khan's lawyers only after he was brought before the Court. The magistrate denied Mr. Khan's application for pretrial release and granted five days' remand. The Court gave permission to the Detective Branch to search Mr. Khan's residence and office for documents. The Detective Branch police reportedly searched the Odhikar office on 11 August 2013 between 8.20 p.m. and 9.00 p.m., inspecting files and documents and seizing three laptop computers and two central processing units (CPUs).

11. On 12 August 2013, the High Court Division of the Supreme Court of Bangladesh stayed the remand order for six weeks, and issued a notice to the Government with a view to explaining within two weeks why the lower court order granting remand should not be cancelled. The High Court vacation bench also allowed the Detective Branch of Dhaka Metropolitan Police to interrogate Mr. Khan at the Dhaka Central Prison gate premises, if necessary.

12. On 13 August 2013, Mr. Khan was transferred to Dhaka Central Jail by the Chief Metropolitan Magistrates Court, in accordance with the order issued by the High Court on 12 August 2013. His lawyer filed an application seeking a preferential treatment at the Dhaka Centre Jail on the basis of education or social status, in accordance with the law. However, the application was rejected. Mr. Khan was soon thereafter transferred to Kashimpur-1 jail, on the outskirts of Dhaka city. The source is concerned that this might be an indication that the judicial process against Mr. Khan might not be

independent. The source reports that Mr. Khan's legal team now plans to appeal to the Sessions Court against the refusal of the application for "division".

13. On 15 August 2013, Mr. Khan's wife visited him at Kashimpur-1 jail. Mr. Khan shares a cell with four other inmates. It is reported that they have basic mattresses, which are riddled with bed bugs, and share a toilet. Food is bought from the jail canteen with their own funds.

14. The source submits that international law requires Bangladesh to ensure rights to life and liberty of all persons and to safeguard the right and duty of Mr. Khan and other lawyers and human rights defenders to engage in human rights advocacy, including advocacy that exposes wrongdoing by government agents. It maintains that the international law instruments that impose these mandatory duties on Bangladesh authorities include the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights, ratified by Bangladesh on 6 December 2000; the Basic Principles on the Role of Lawyers (1990) and the Declaration on Human Rights Defenders (1998).

15. In regard to the Declaration on Human Rights Defenders, the source draws attention to article 1, 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 fundamental freedoms at the national and international levels", and to article 12, paragraph 2, which provides 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 his or her rights.

16. The source argues that any intentional involvement of State agents in the wrongful deprivation of a person's liberty violates internationally protected rights and puts the integrity of the legal system at risk. It maintains that the laying of charges known to be false puts police and judicial authorities at risk of unwittingly participating in the violation of protected rights and an abuse of process. In its view, the purpose of the charges against Mr. Khan is to invoke extralegal criminal sanctions against legitimate legal and human rights advocacy by himself and Odhikar. The source submits that the deprivation of Mr. Khan's liberty may be considered arbitrary.

#### *Response from the Government*

17. By letter dated 3 September 2013, the Working Group transmitted the above allegations to the Government of Bangladesh, requesting detailed information about Mr. Khan's current situation. The Working Group regrets that the Government did not respond to the allegations transmitted by the Group within 60 days, in accordance with paragraph 15 of the Working Group's methods of work.

18. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Mr. Khan, in conformity with paragraph 16 of its methods of work.

#### **Discussion**

19. It should be recalled that, following his arrest, Mr. Khan was the subject of an urgent appeal dated 14 August 2013, from several special procedures mandate holders, in relation to the same facts, which remains unanswered.

20. It should also be noted that Mr. Khan is a prominent human rights activist and as such holds important responsibilities in a number of civil society organizations at both national and international levels, in addition to his status as a lawyer in the Supreme Court of Bangladesh.

21. Further, there has been no specific charge laid against him for committing any offence under criminal law and he is being detained on the basis of vague offences such as publicizing false information concerning allegations about the regime in power or disseminating such information on the Odhikar website.

22. The Working Group thus believes that Mr. Khan's detention was a direct consequence of his peaceful exercise of the right to freedom of opinion and expression, and is therefore contrary to articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights.

#### **Disposition**

23. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Khan is arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and 9 and 19 of the International Covenant on Civil and Political Rights and falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

24. Consequent upon the opinion rendered, the Working Group requests the Government to proceed with the immediate release of Mr. Khan and discontinue the criminal proceedings against him in this case.

25. The Working Group requests the Government to provide adequate reparation for the arbitrary detention to which Mr. Khan was subjected, in line with its international obligations pursuant to article 9, paragraph 5, of the Covenant.

26. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>1</sup>

[Adopted on 13 November 2013]

<sup>1</sup>Human Rights Council resolution 24/7, paras. 3, 6 and 9.