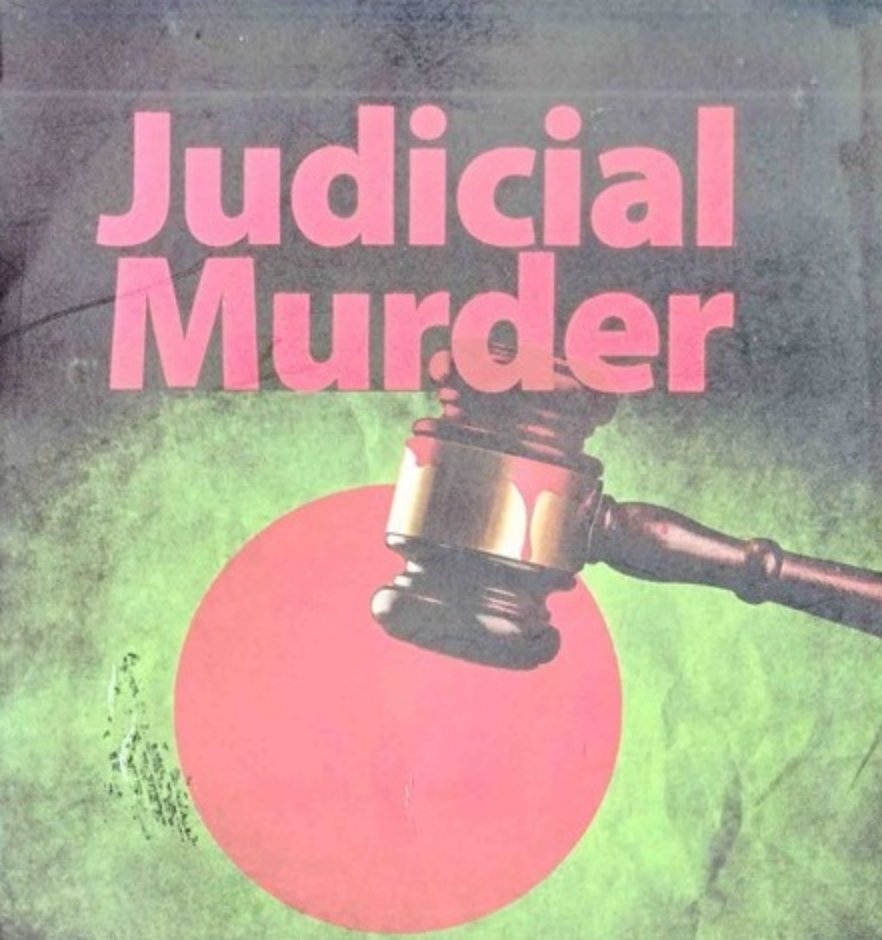
Judicial Murder



The Bangladesh Judiciary on Trial

Citizens International

JUDICIAL MURDER

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After those many encounters, that easy intimacy,
we are strangers now –
After how many meetings will we be that close again?

When will we again see a spring of unstained green?
After how many monsoons will the blood be washed
from the branches?

So relentless was the end of love, so heartless –
After the nights of tenderness, the dawns were pitiless,
so pitiless.

And so crushed was the heart that though it wished
it found no chance –
after the entreaties, after the despair – for us to
quarrel once again as old friends.

Faiz, what you'd gone to say, ready to offer everything,
even your life –
those healing words remained unspoken after all else had
been said.

Faiz Ahmad Faiz, "On return from Dhaka"

Translated by Agha Shahid Ali

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FOREWORD

The Awami League of Bangladesh Prime Minister Sheikh Hasina won a landslide victory in the 2008 elections which provided a golden opportunity for her government to deal with the major problems plaguing the nation ever since its creation in 1972 – namely bad governance, weak democratic institutions, political rivalry driven by revenge, corruption, gross violation of human rights, poverty and inequality. It also opened the door to building a national consensus on reducing politicking and focusing on building national unity, socio-economic development and an ethical society. Sadly, the government has squandered this opportunity and created greater division in the society leading to increased violence, abuse of power and political instability.

In its election manifesto the Awami League pledged to avoid political partisanship, establish human rights on a strong footing with a view to ensuring the rule of law, uphold the independence of the judiciary and state institutions, free the administration from partisan influence and fight corruption. In its five years in power, Hasina's administration has contemptuously violated every one of these pledges.

Odhikar, the respected Bangladesh human rights organisation, in its 2012 report on the human rights situation in the country wrote: "The experience of the last four years is full of evidence that the trust

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of the people has been blatantly betrayed ... the undemocratic and dictatorial nature of power had commenced in various manifestations; and continued abusing the State institution for partisan interests and narrow economic gains ... partisan violence between and within major political parties continued and the government has been brutally repressing the rights of the people to assemble and articulate their grievances." [Odhikar (2013), *Human Rights Report 2012*, pp. 5-6]

The report further states:

> "To rule by terror, the government resorted to some techniques ... the repression of the opposition political parties, workers and social organisations ... the use and abuse of the Judiciary to punish opponents and the dissenters who criticise the government. The appointment of Judges on political consideration ... abducting and killing people, particularly political leaders, mainly through 'enforced disappearance'... The present regime promised to observe zero tolerance to extrajudicial killings. However, extrajudicial killings continue and with it, continued torturing and killing people in police custody ... Repression of the media and silencing the dissenters is another method..." [p. 6]

One of the first acts of Hasina's government was to set up the International Crimes Tribunal to prosecute those responsible for international crimes during the 1971 civil war. Many welcomed the move, believing that the process would be fair and would lead to justice for the war crimes victims and their families, as well as reconciliation between those who had wanted East Pakistan to continue to remain as part of Pakistan and those who wanted independence. Unfortunately, the issue of war crimes has been manipulated by the Awami League leaders and their secular fundamentalist supporters to attempt to eliminate the Islamic political parties including Jamaat-e-Islami and weaken the main opposition party, the Bangladesh Nationalist Party (BNP). A leaked cable from the US State Department confirms this: "... there is little doubt that hard-line elements within the ruling party [AL] believe that the time is right to crush Jamaat and other

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Islamic parties." [Joseph Allchin (2012), "The Midlife Crisis of Bangladesh", *Foreign Policy*, 21 December]

The Tribunal has come under widespread criticism for failing to observe international standards. Human Rights Watch has commented: "Glaring violations of fair trial standards became apparent in 2012 in the trials of the International Crimes Tribunal (ICT) ... serious flaws in the law and rules of procedure governing these trials have gone unaddressed, despite proposals from the US government and many international experts." [Human Rights Watch (2012), "Bangladesh Government Backtracks on Rights", 1 February]The UN Working Group on Arbitrary Detention has found the Tribunal's refusal to grant bail to the accused and their continued detention as being arbitrary and in violation of international law. Professor Ghulam Azam, who is 90 years old and suffering from illness and not getting proper treatment in prison, has been repeatedly denied bail.

Skype conversations and emails between the then Tribunal Chairman Mohamed Nizamul Huq and a lawyer of Bengali origin living in Belgium Dr. Ahmed Ziauddin, published in *The Economist (12* December 2012) and the Bangladesh daily *Amar Desh* (9 December 2012), reveal collusion between the government, Huq and the prosecutors to convict the accused leaders of Jamaat. They reveal direct government interference in the appointment of judges of the Tribunal and its proceedings, applying political pressure to come out with fast verdicts. Huq was promised promotion to the appellate division of the Supreme Court if he gave one verdict by December 2012.

After the scandal became public, Huq resigned from the Tribunal, which was reconstituted with a new Chairman appointed to take his place. The reconstituted Tribunal showed its lack of independence and partiality by rejecting the application by the defendant Maulana Delwar Hossain Sayedee for a retrial based on the improper and illegal conduct of the former Chairman. The Tribunal proceeded with the

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trial although none of the three judges hearing the case had heard the full evidence given by witnesses. They found Maulana Sayedee guilty of the charges and sentenced him to death. On the improper and biased conduct of the Tribunal judges, Human Rights Watch commented:

> "It would be highly irresponsible and unprofessional for a verdict to be delivered when none of the judges heard all the evidence and were unable to assess the credibility of key witnesses, particularly in trial involving 40-year old evidence and complex legal issues. Before the chair of the court resigned for improprieties only one judge had heard the totality of the evidence, and now even that one judge is gone. A new trial is the only way for the court to preserve its integrity."

The prosecution of the Jamaat and BNP leaders is not aimed at doing justice to the victims of the independence war but to destroy Hasina's political opponents. Her father Sheikh Mujibur Rahman, in his wisdom, declared in the 1974 agreement signed between Bangladesh, India and Pakistan in New Delhi that, "with regard to the atrocities and destruction committed in Bangladesh in 1971, he wanted the people to forget the past and to make a fresh start, stating that the people of Bangladesh knew how to forgive."

Hasina, her party and its followers, while idolising him, have ignored his sensible advice which, if followed, would have led to national reconciliation, socio-economic progress and independent national institutions instead of the anarchy, violation of human rights, corrupt institutions and grinding poverty that prevail now.

Bangladesh is one of the poorest nations in the world. Over 70% of the population survives on less than $2 a day. Bangladesh is ranked 146th out of 187 countries in the Human Development Index (HDI). Corruption is pervasive and the judiciary is the most corrupt institution, according to Transparency International. Instead of focusing efforts on promoting national unity and wiping out poverty

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and corruption, Hasina is creating deep divisions within Bangladesh society and further corrupting the judiciary to serve the Awami League's political objective of eliminating the opposition.

We are publishing this book to draw international attention to the collapse of the independence, integrity and impartiality of the judiciary in Bangladesh leading to abuses of power by the law enforcement agencies, serious violations of human rights and violence by the state. An international campaign is needed to prevent the judicial murder of those Jamaat and BNP leaders facing trials in the Tribunal and to ensure a fair trial for them before an independent tribunal according to international standards.

S.M. Mohamed Idris
Chairman
Citizens International
July 2013

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CHAPTER 1

HISTORICAL BACKGROUND

When British colonialism in India ended in August 1947, two states came into existence, the Republic of India and Pakistan. The latter, which consisted of two wings, West and East Pakistan, separated by over a thousand miles, was to meet the demands of the Muslim elite and landowning class of the sub-continent for a homeland for Muslims. Some Muslim leaders like the late Maulana Abul Kalam Azad and the Deoband Ulama were opposed to partition and the creation of Pakistan. Azad was prescient when, in an interview in April 1946, he predicted the breakup of the two wings of Pakistan. He said:

> "I feel that it will not be possible for East Pakistan to stay with West Pakistan for any considerable period of time. There is nothing common between the two regions except that they call themselves Muslims ... the language, customs and way of life of East Pakistan are totally different from West Pakistan. The moment the creative warmth of Pakistan cools down, the contradictions will emerge and will acquire assertive overtones. These will be fuelled by the clash of interests of international powers and consequently both wings will separate." [http://communalism.blogspot.com/2009/11/against-two-nation-theoy-and-partition.html]

After the creation of Pakistan, political power was concentrated in West Pakistan, and the attempt by the authorities there to impose Urdu as the national language led to the birth of the Bengali language

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movement which finally grew into the nationalist movement, led by the secular leadership of Sheikh Mujibur Rahman's Awami League, demanding, initially, greater autonomy for East Pakistan.

The inadequate allocation of economic resources to East Pakistan and the cultural and political discrimination practised by the central government alienated large sections of the people there and fuelled the nationalist demand for greater autonomy. The final straw was the denial of the premiership to Mujibur Rahman, whose party, the Awami League, had won the elections for parliament.

This led to violent protests by the Awami League and its allies whose demand now was independence, which would constitute sedition under the law then in force in East Pakistan. The Pakistan Army used disproportionate force to suppress the uprising, and in the process committed many war crimes and crimes against humanity. India supported the Awami League and the forces demanding independence militarily and politically as their success would fulfil India's geo-political agenda to break up and weaken Pakistan. This led to a civil war in East Pakistan and a war between India and Pakistan which resulted in a humiliating defeat for Pakistan.

Maulana Azad's prediction came true when Sheikh Mujibur Rahman declared East Pakistan's independence as the state of Bangladesh on 26 March 1971, nearly 25 years after the creation of Pakistan. Not all Bengalis supported independence for East Pakistan, however; millions wanted it to remain an integral part of Pakistan. On the division within Bengali society on the question of independence, Sarmila Bose, a British academic and granddaughter of the famous Indian independence fighter Subash Chandra Bose, writes:

> "The civil war was not merely between the two wings of Pakistan, but also within the territory of East Pakistan, between Bengalis and non-Bengalis, and among Bengalis themselves, who were bitterly divided between those who favoured independence for Bangladesh and those who supported

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the unity and integrity of Pakistan." [Sarmila Bose (2005), "Anatomy of Violence: Analysis of Civil War in East Pakistan in 1971", *Economic and Political Weekly*, 8 October, pp. 4463-4471]

Even families were divided on the issue. Bose writes:

"The profound polarisation of politics reached even into individual Bengali families, dividing some of them horizontally – for example the father, who had experienced the creation of Pakistan, supported united Pakistan, while the son, swayed by the oratory of Sheikh Mujib, joined the fight for an independent Bangladesh. The internal battles among Bengalis in East Pakistan in 1971 are still playing out in the current politics of Bangladesh."

The civil war was fought on the basis of legitimate political positions. All sides are responsible for the violence and brutalities that took place. As Bose writes:

"The civil war of 1971 was fought between those who believed they were fighting for a united Pakistan and those who believed their chance for justice and progress lay in an independent Bangladesh. Both were legitimate political positions. All parties in this conflict embraced violence as a means to the end, all committed acts of brutality outside accepted norms of warfare, and all had their share of humanity. These attributes make the 1971 conflict particularly suitable for efforts towards reconciliation, rather than the recrimination that has so far been its hallmark."

In January 1972, a special law, namely Bangladesh Collaborators (Special Tribunals) Ordinance, 1972 (the 1972 Ordinance), was promulgated to set up tribunals to try those persons who directly or indirectly acted in collaboration with the Pakistan Armed Forces. Some people were tried and convicted under the 1972 Ordinance. However, in November 1973, a general amnesty was granted to those who were convicted under the 1972 Ordinance with the exception

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of those persons who were found guilty of serious crimes, namely murder, rape or arson. Not a single member of Jamaat-e-Islami, whose leaders are now facing trial for international crimes, was convicted for any of the serious crimes.

Earlier, in April 1973, after an inquiry ordered by the Government of Bangladesh, 195 prisoners of war (POWs), all members of the Pakistan Armed Forces and none of them of Bangladeshi origin, were identified as war criminals. In July 1973, the International Crimes (Tribunals) Act, 1973 (the 1973 Act) was passed by the Bangladesh Parliament to try the 195 POWs as war criminals. Earlier, the Constitution was amended to deny fundamental rights and the right of judicial review to the 195 POWs.

In February 1974, Pakistan recognised Bangladesh. In April 1974, a Tripartite Agreement was signed between Bangladesh, India and Pakistan as a result of which charges of war crimes were dropped against the 195 POWs and all of them were repatriated to Pakistan without trial. Sheikh Mujibur Rahman, the father of the current Prime Minister Sheikh Hasina, in his wisdom, declared in the 1974 agreement that, "with regard to the atrocities and destruction committed in Bangladesh in 1971, he wanted the people to forget the past and to make a fresh start, stating that the people of Bangladesh knew how to forgive."

In 1975, Bangladesh became a one-party dictatorship with Sheikh Mujibur Rahman as president. The Constitution was amended to provide for a one-party presidential system in place of a multi-party parliamentary system. The judiciary lost much of its independence and corruption was rampant. This led to the military coup of 15 August 1975 in which nearly the entire family of Mujibur Rahman and several ministers and Awami League leaders were assassinated. Following the change of government in 1975, the Bangladesh Collaborators Ordinance of 1972 was repealed, thus bringing to an end the

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issues of collaboration with the Pakistan Army and the trial of war criminals.

Bangladesh is a democracy with a written constitution. The original Constitution of Bangladesh, adopted in November 1972, was a secular one under which the right to organise a political party on the basis of religion was forbidden. Following the change of government and the declaration of martial law in 1975, the Constitution was amended to incorporate "Bismillahir Rahmanir Rahim", and secularism was replaced with "absolute trust and faith in Almighty Allah" as a fundamental principle of the Constitution. Socialism was redefined as meaning "economic and social justice" and religious political parties were allowed to function. In 1988, by a further amendment to the Constitution, Islam was made the state religion. These amendments reflect the desire of the Bangladeshi Muslims, who constitute 90 per cent of the population, for a constitution with an Islamic character.

From the beginning of 1979, Islamic political parties started functioning and Jamaat-e-Islami was reorganised in 1979. Nearly 90 per cent of its membership comes from the post-independence generation and those in their teens at the time of independence. It has been functioning as an Islamic political party and taken part in all the parliamentary elections held in the country since 1986 and has been having representation in parliament all throughout.

In the 2001 elections, the Awami League-led coalition suffered a heavy defeat while the Bangladesh Nationalist Party (BNP)-led coalition including Jamaat achieved a resounding victory. The BNP-led coalition formed the government, in which Jamaat's Ameer (chief) and Secretary-General became cabinet ministers. This was deeply resented by the secularist and anti-Islamic groups and individuals who were waiting in the wings for an opportunity to crack down on the Islamic forces. The coalition government's tenure came to an end in October 2006 after a prolonged campaign of destabilisation launched by the Awami League and its partners.

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In January 2007, an emergency was declared and a caretaker government established. During the emergency, for the first time, the issue of trial of war criminals was raised by the head of the Army and a smear campaign was started against the Jamaat leaders in the media. Anti-Islamic forces from the military, the media and secular civil society organisations and individuals made an unholy alliance and identified the top leadership of Jamaat as "war criminals" and raised the demand for their trial.

In the 2008 elections, the Awami League-led coalition, including left-leaning and secular political parties, made the war crimes trial an election issue and won a landslide victory. This electoral triumph was arrogantly interpreted by the Awami League leaders and the anti-Islamic forces as endorsement by the people to crush the Islamic political movement, and to marginalise Islam, in Bangladesh. The process for realising this nefarious agenda began with the judiciary rewriting the Constitution to remove its Islamic character and the government creating the legal framework for, and establishing, the International Crimes Tribunal, which has been widely criticised by the United Nations, human rights organisations and governments for not adopting international standards for the trial of those accused of war crimes.

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CHAPTER 2

THE INTERNATIONAL CRIMES TRIBUNAL

In 1973, the Bangladesh Parliament enacted the International Crimes (Tribunals) Act primarily to try the 195 Pakistani POWs. In 1974, they were repatriated to Pakistan without trial. After 37 years, in March 2010, the Bangladesh Government established the International Crimes Tribunal (ICT) to try its own citizens. In July 2010, the Tribunal promulgated the Rules of Procedure, which have since been amended several times.

Since the establishment of the Tribunal, the Government has come under pressure from the international community, a section of Bangladeshi civil society, including the Supreme Court Bar Association, and a number of opposition political parties to amend (i) the Constitution, (ii) the 1973 Act and (iii) the Rules of Procedure to bring the law in line with international standards. Those who spoke out on the international front included Human Rights Watch, Amnesty International, the International Centre for Transitional Justice (ICTJ), the International Bar Association (IBA) and the US Ambassador at Large on War Crimes Issues Stephen Rapp. On 14 July 2011, the US Government and the British Government also made public statements calling for a free and fair trial that observes the principles of transparency and accountability.

On 26 September 2010, in addressing the 65th session of the United Nations General Assembly, Prime Minister Sheikh Hasina assured the

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global community that Bangladesh had established an International Crimes Tribunal to try persons responsible for war crimes in accordance with the rule of law as reflected in the Rome Statute. But her assurance sounded hollow as her Government has failed to amend the Constitution and the 1973 Act to ensure fair trial as demanded by the international community. The latest amendments to the Rules have given further advantage to the prosecution and very little to the defence. A trial under the existing law would serve only to legalise injustice.

Constitutional Rights Denied

The First Amendment to the Constitution prevents a person accused of committing war crimes from challenging any provision of the 1973 Act on the grounds of its inconsistency with any provision of the Constitution and the fundamental rights. Stephen Rapp, Human Rights Watch, Amnesty International and ICTJ have criticised the First Amendment and asked for its repeal.

In his letter of 21 March 2011 to the Bangladesh Foreign Minister, Ambassador Rapp pointed out that:

> "a party to a proceeding before the ICT should be able to raise questions as to whether the provisions of the 1973 Act and the 2009 amendments violate international or domestic law as to retroactivity as well as other jurisdictional matters."

In its letter of 15 March 2011 to the Law Minister, ICTJ also categorically stated that:

> "as a procedural guarantee, the defendant must have the right to challenge any aspect of the legal regime that will preside over the trial and seek judicial review based on the relevant standards of legality, as recognised under international law."

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In its letter of 18 May 2011 to the Prime Minister, Human Rights Watch made a specific recommendation regarding constitutional amendment in the following terms:

> "Article 47A of the Constitution of Bangladesh be repealed to allow the accused protection of their constitutional rights, including the right to enforce their fundamental rights under Article 44 of the Constitution."

In its letter of 21 June 2011, Amnesty International, in the following terms, stressed that the current constitutional provisions deny guarantees of the right to fair trial, which is recognised in international law:

> "Article 47A of the Constitution expressly denies persons before the Tribunal their constitutional rights to protection of law, against retroactive criminal legislation ..., and their right to speedy and public trial by an independent and impartial tribunal established by law and certain other fundamental rights."

But the Government has turned a deaf ear to these appeals and, instead, introduced a further amendment on 30 June 2011 by which even an individual, not being a member of the auxiliary forces, cannot challenge the constitutionality of the 1973 Act. The sole purpose of the latest amendment is to prevent the top leaders of Bangladesh Jamaat-e-Islami and two former ministers of the BNP facing trial in the Tribunal on charges of crimes against humanity from challenging the law under which they are being tried. Amnesty International in its 21 June 2011 letter to the Chairman of the Tribunal pointed out that an impression has been created that "the Tribunal is dealing only with suspected perpetrators who are members of the current opposition parties".

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Elements of Crimes Not Defined

Section 3(2) of the Act of 1973 does not define but merely provides a list of the crimes triable by the Tribunal. In the absence of a clear definition of crimes, it is impossible for the accused persons to prepare their defence.

In its letter to the Law Minister dated 15 March 2011, ICTJ observed that the 1973 Act does not precisely and accurately define the crimes which constitute the subject matter jurisdiction of the Tribunal. ICTJ further observed that "in order for an accused person to understand the nature of charges against him and to have an adequate opportunity to defend himself against these allegations, the Tribunal's jurisdiction must be sufficiently and clearly defined, including the elements of crime, forms of individual criminal liability and admissible defences..."

Ambassador Rapp in his letter to the Foreign Minister recommended consideration of adoption of a rule which would provide that in determining liability for crimes that are included in the Statute of the International Criminal Court (ICC), the judges of the Tribunal should be guided by the ICC Elements of Crimes. Ambassador Rapp also stressed that the Tribunal should seek guidance from them to the extent that they do not expand criminal responsibility.

Human Rights Watch in its letter dated 8 July 2009 recommended that "the definition of genocide, crimes against humanity and war crimes, and the definition of liability for crimes, be amended to be the same as those under the Rome statute of the International Criminal Court so that the court's verdicts will be internationally recognised".

Domestic or International Tribunal

Although the Tribunal has been established under Bangladesh law, it is a settled principle of law by the Appellate Division of the Supreme

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Court that "the national courts should not ... ignore the international obligations which a country undertakes" and that if "the domestic laws are not clear enough or there is nothing therein, the national courts should draw upon the principles incorporated in international instruments" [2001 BLD (AD) 69].

Thus, the Tribunal is under an obligation to "draw upon the principles incorporated" in the International Covenant on Civil and Political Rights (ICCPR) and the Rome Statute, which have been ratified by Bangladesh. This obligation was accepted by the Prime Minister in her address to the UN General Assembly on 26 September 2010.

Ambassador Rapp in his letter of March 2011 to the Foreign Minister noted that Bangladesh, being a State Party to the Rome Statute, has in fact "accepted application of the provisions of the Rome Statute, the ICC Elements of Crime, the ICC Rules of Procedure and Evidence in future cases before the ICC involving Bangladesh citizens". He went on to suggest that "the Government of Bangladesh incorporate the provisions of the ICCPR relating to fair judicial process and the statutes, elements of crime and rules of procedure of the ICC and international tribunals among the rules and practices applicable to proceedings before the ICT".

The Tribunal's Registrar and Government ministers have accused those calling for adoption of international standards of creating doubts as to the legality and acceptability of the Tribunal. This accusation is baseless and irresponsible especially in view of the fact that the war crimes accused may face the death penalty if found guilty. The Government must decide whether to follow international standards or to treat the Tribunal as a domestic one. If it is a domestic tribunal, domestic laws should be followed, granting the accused persons the protection of fundamental rights guaranteed in the Constitution, the procedural safeguards contained in the Criminal Procedure Code and the substantive law of evidence codified in the Evidence Act.

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Denial of Bail

The Rules provide that the Investigation Agency shall conclude the investigation within one year of the arrest of the accused person. The Tribunal has discretion, in "exceptional circumstances", to extend the detention period by six months. The term "exceptional circumstances" has not been defined and this has opened the door to abuse by the Tribunal. Rule 9 has been amended solely with a view to justifying the Tribunal's repeated refusal to grant bail to the accused persons. Professor Ghulam Azam, who is 90 years old and suffering from illness, and not getting proper treatment in prison, was repeatedly denied bail.

In international war crimes tribunals set up for Yugoslavia and Rwanda the maximum period of pre-trial detention is 90 days. The UN Working Group on Arbitrary Detention in their Opinions given in November 2011 and December 2012 have found the Tribunal's refusal to grant bail to BNP and Jamaat leaders, and their continued detention, to be arbitrary and in violation of international law.

Interrogation and Admissibility of Evidence

The Rules do not incorporate procedural safeguards to regulate the interrogation of accused persons similar to the rules of the Rwanda and Yugoslavia tribunals. The Rwanda tribunal rules require that the interrogation of the accused persons be video-taped or audio-taped so as to ensure that evidence tainted by coercion, duress and undue influence is not admitted. They guarantee the right of an accused person to have a counsel of his choice present during interrogation. Unfortunately, such provisions have not been incorporated in the Bangladesh Tribunal Rules.

The Tribunal may admit any documents or their photocopies as evidence if such documents initially appear to have probative value. "Probative value" has not been defined and no objective test has

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been laid down for determining it. Thus, even fourth-degree hearsay evidence may be received as evidence.

Interlocutory Appeal

The 1973 Act should have been amended to provide for an appellate forum to hear appeals against the interlocutory orders. Such provisions are available in most international tribunals. Ambassador Rapp in his letter to the Foreign Minister emphasised that an appellate forum is necessary to avoid the situation that would occur when the appellate court decides on final appeal that a significant legal error was made at the trial and the only fair remedy is a retrial.

In the absence of a forum of appeal against orders passed by the Tribunal, the accused persons have been denied the opportunity of challenging manifestly perverse interlocutory orders passed by the Tribunal. This will seriously prejudice the right of the accused persons to a fair trial.

The new Rule 26(3) provides for review of an order by the Tribunal but it is inadequate and cannot be a substitute for a right of appeal. Unlike an appeal, the scope of review is very limited and is before the same Tribunal which initially passed the order. As such, the accused persons will be deprived of a fair and effective opportunity to challenge the orders passed by the Tribunal. A review is an appeal from Caesar to Caesar.

Obstacles to Preparing Defence

The time given by the Rules to the accused to prepare his defence, three weeks, is grossly inadequate and contrary to international standards. He has to respond to charges of genocide and crimes against humanity allegedly committed over 40 years ago. In contrast, the Investigation Agency is given one year from the time of arrest of the accused person to conduct its investigation, and this may be

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extended by a further six months by the Tribunal. Human Rights Watch, in its letter to the Prime Minister, pointed out that the three weeks allowed by the 1973 Act "fall far short of normative practices in various international tribunals, where the defence typically receives several months to prepare after detailed receipt of the Prosecution's witness statements and other evidence".

The authorities have completely ignored Ambassador Rapp's recommendation for adopting rules that would regulate disclosure of relevant documents and materials in a manner similar to that provided in the ICC Rules. Adoption of rules similar to the ICC Rules on disclosure would have ensured that the defence receives the names of witnesses whom the prosecutor intends to call and copies of any prior statements made by those witnesses "sufficiently in advance to enable the adequate preparation of the defence". However, no such provision has been made in the Tribunal Rules, which are in violation of the rights guaranteed to an accused person under Article 14(3)(b) of the ICCPR with regard to adequate time and facilities essential for the preparation of a defence.

Challenging the Constitution of the Tribunal

The ICC Rules allow the defence to challenge the appointment of any member of the tribunal on the ground of bias. Such a provision was included in the rules of the Yugoslavia and Rwanda tribunals. This defence right is widely recognised by the courts and tribunals across Europe and the United States. In the much-publicised case of General Augusto Pinochet, the British House of Lords held that Lord Hoffman was disqualified from hearing a matter in view of his links with Amnesty International and accordingly set aside a ruling of a panel of Law Lords allowing the extradition of Pinochet.

Section 6(8) of the 1973 Act has expressly taken away the right of the defence to challenge the constitution of the Tribunal. This has enabled the Government to appoint judges to the Tribunal whose integrity

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and impartiality are highly questionable. Skype conversations and emails between the then Chairman of the Tribunal Justice Nizamul Huq and a Bangladeshi lawyer from Belgium involved in the witch hunt of Bangladeshi "war criminals" have confirmed this fact (see Chapter 4).

The Bangladesh war crimes tribunal: reconciliation or revenge?

by John Cammegh
www.crimesofwar.org, 2011

The steady development of international criminal law and of war crimes tribunals in particular over the past 20 years has owed much to the maxim "No Peace Without Justice". But there can be no peace without a winner; and in the aftermath it is the winner who gets to dispense the justice and write the history. All too frequently, the international judicial process has drawn accusations of providing a means of revenge rather than reconciliation.

The perception of victor's justice has bedevilled ad hoc war crimes tribunals since Nuremberg: the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) placed disproportionate emphasis on prosecuting the vanquished. Even at the Special Court for Sierra Leone (SCSL), where trials of victorious pro-government leaders were supposedly given equal billing to those of the defeated RUF rebels, sentences for crimes of equal gravity were cynically disproportionate. This is not to say the international tribunal system cannot be made to work; the International Criminal Court (ICC) makes for a process less vulnerable to political manipulation. But, so far as the ad hoc tribunals

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go, experience drives an inescapable conclusion: If there is no peace without justice, there can be no justice without politics. The trouble is, politically motivated, selective justice is anathema to civilised democratic society and is ultimately doomed to fail – as it eventually did in totalitarian states in the 20th century.

Today, on a tide of nationalist fervour, the ad hoc Bangladesh International Crimes Tribunal (ICT) is set to embark on a series of trials concerning surviving individuals allegedly responsible for atrocities committed in the 1971 Liberation War. Swept into power in 2008 on a manifesto to hold these trials 40 years after the event pursuant to legislation mothballed since 1973, Prime Minister Sheikh Hasina and her Awami League government are about to deliver on their promise. But will these trials avoid the mistakes of the past? Speaking in October 2011, State Minister for Law Qamrul Islam attempted to allay any such doubt:

"The international criminal trial process will be more neutral and transparent than that of other war crimes trials so far held elsewhere in the world. It will be exemplary for the world community ... working with full independence and complete neutrality."

On the face of it, such aspirations are encouraging, if perhaps naïve. At the very least, they suggest a desire for openness, balance and restraint – qualities I found desperately lacking at the SCSL as lead counsel for one of the RUF indictees. Taking Mr. Islam at his word, Bangladesh has a privileged opportunity to change the course of ad hoc international criminal justice. If it were to get things right, the ICT could set a brave example to the developing world in particular in banishing impunity whilst cementing national reconciliation. But if it were to get things wrong, the consequences might be disastrous: not only for the wellbeing of international justice but for the region as a whole. The trials are yet to commence and time will tell; but despite the Minister's lofty assurances, the opportunity seems likely to be wasted.

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The 1973 International Crimes (Tribunals) Act: A Brief History

Pakistan's partition from newly-independent India in 1947 was the culmination of a long and bloody struggle in which hundreds of thousands died on both sides, leaving a legacy of mistrust between the two states that persists to this day. To accommodate religious and cultural differences, newly-created Pakistan was divided into two separate territories, western and eastern Pakistan, separated by the vast expanse of northern India. Of the two, east Pakistan was the poor relation, prone to natural disasters and suffering widespread social, economic and political discrimination from the western-based ruling elite. By 1970 the impetus of Sheikh Mujibur Rahman's nationalist movement in east Pakistan forced the military ruler, General Yahya Khan, to hold free elections in which Mujibur's Awami League triumphed over Zulfikar Ali Bhutto's Pakistan People's Party in the west. Bhutto was a bad loser; Mujibur was equally reluctant to compromise. As they squabbled over power, Gen. Yahya Khan postponed the sitting of the National Assembly. The open revolt that followed in the east in March 1971, and in Dhaka in particular, led to a savage civil war of epic proportions. Although lasting only nine months until India's decisive intervention in December, it cost the lives of hundreds of thousands: the majority of whom were neither freedom fighters nor anti-liberation forces but defenceless civilians.

As with all conflicts, there is competition over the truth; fact and myth merge after years of propaganda and prejudice generated on both sides. Whilst nationalist claims of up to 3 million dead are surely far-fetched, the Bangladesh Liberation War certainly saw large-scale acts of genocide with the hounding out, killing and displacement of individuals by virtue of their profiling as members of religious or ethnic groups. Hindus in particular suffered brutal ethnic cleansing at the hands of Pakistani military forces opposed to independence. Many such wounds are yet to heal: The call for justice and reconciliation, albeit 40 years on, cannot and should not be denied.

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The ICT had its genesis in the International Crimes (Tribunals) Act of 1973 (ICTA), which proposed to hold the first international criminal tribunal since 1946. Using Nuremberg as a template, ICTA cited genocide, crimes against humanity and war crimes, amongst others, as the basis for bringing anti-liberation military personnel (former Pakistan Army combatants) and their auxiliary forces (local "Razakar" units of anti-liberation volunteers) to justice for crimes committed against civilians and pro-liberation freedom fighters alike. The idea was stillborn; in the spirit of peace and reconciliation Sheikh Mujibur swiftly repatriated several hundred Pakistani prisoners of war following the tripartite Simla Agreement with India and Pakistan. Following Mujibur's Presidential Order No. 16 in 1973, in which a blanket amnesty was granted to all participants "in connection" with the conflict, ICTA was seemingly put to rest: until its resuscitation during the Awami League's 2008 election campaign, that is.

A Selective Prosecution?

Whether today's Bangladesh war crimes tribunal evokes a genuine desire to heal past wounds, or is simply a blunt instrument of political expediency to mask socio-economic difficulties at home, the promise of trials has triggered widespread, populist demands for vengeance amidst this, the war's 40th anniversary year. But who should be tried? The Pakistan military were all sent home; most of the auxiliary leaders either left with them or have since died. In any event, all combatants were effectively pardoned by Sheikh Mujibur in 1973.

Deft amendment of the 1973 Act found a way past this problem in 2009, adding the new category of "individuals" to the original ICTA targets of anti-liberation armed forces and auxiliary personnel. By contrast, immunity for pro-liberation "freedom fighters" remained intact, irrespective of their conduct in the conflict. Now, with this loophole in place, what was originally drafted in 1973 as a vehicle to prosecute military excesses during the conflict had assumed the appearance of a means of pursuing pre-selected civilian targets 40 years later.

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Certainly, the initial arrest phase from June to December 2010 suggested a coincidental pattern: Five of the six detained comprised the leadership of Bangladesh's most powerful Islamic political party, Jamaat-e-Islami; the other was a central figure in the Bangladesh Nationalist Party (BNP). Considering that Jamaat actively opposed independence in 1971, and that their alliance with the BNP ensured the Awami League's defeat at the 2001 election, questions arise as to whether the Awami League-sponsored ICT may, after all, have more urgent motives other than bringing those responsible for the events of 1971 to justice.

ICTA 1973 – The Hangman's Charter

Regardless of the government's motive, it is important to grasp both the full extent of the draconian powers conferred by ICTA on the Tribunal and the prosecution, and the frightening extent to which the rights of the accused are curtailed in proceedings that allow for the death penalty. Brief inspection of the statute immediately casts a shadow on Qamrul Islam's assurances of a fair trial process. Whilst this was the first statutory attempt to create a war crimes tribunal after Nuremberg – which hardly set a glowing precedent – there can be no excuse for the Act's spectacular denigration of the rights of accused persons. For the Act to be resurrected almost 40 years later in virtually unchanged form suggests, at best, that the government has little interest in conforming with modern standards – despite being a State Party to the International Criminal Court and a signatory to the International Covenant on Civil and Political Rights. At worst, two years ahead of the next general election, it betrays a cynical determination to eliminate opposition figures for political gain.

A detailed exposition of ICTA's many excesses would be too lengthy here. In summary, its pre-trial provisions confer rights on government-appointed investigators to detain and question any person without notice; there is no statutory right to any form of prior disclosure to the suspect, no right to silence in interview, and there is no right to

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have a lawyer present. While the first arrestee, Jamaat's leading cleric Delwar Hossain Sayedee, was interviewed, his attending lawyer was forced to "observe" from an adjoining room, his task hindered by the absence of a window or the ability to hear what was being said. During lunch breaks excited investigators briefed the expectant press corps on the suspect's "confession", duly sensationalised in the national press and on the internet the following day. Formal charging (on an indictment "framed" by the judges themselves) is ordained to proceed in a specially convened hearing whereupon the accused is arraigned immediately. When formal charges were eventually put to Sayedee, he was prevented from conferring with his lawyer and was instead ordered immediately to enter pleas to a lengthy series of charges, most of which alleged multiple offences drafted with an alarming lack of specificity as to date, location and details of alleged victims. Following arraignment, the Act allows just three weeks until commencement of trial, on which day the defence is to disclose full details of its case, including identities of witnesses and exhibits. Compared to proceedings at the ICC, or indeed at recent ad hoc tribunals where the gap between arraignment and trial can typically extend to six months or more, this might be considered a little harsh – particularly when the alleged conduct took place 40 years ago.

The Act's impact on the trial process itself is equally disturbing. As with investigators, all judges on the Tribunal panel are to be appointed by the government; proceedings may continue in a judge's absence, and there is no right to challenge judicial appointments. Judges have an unfettered right to question witnesses with no right for defence counsel to re-examine. Fundamental rules of evidence are dispensed with entirely: the 1872 Evidence Act, and the 1898 Criminal Procedure Code, largely derived from the statute that until recently governed English proceedings and which continues to govern the rules of evidence and procedure in Bangladesh's domestic criminal courts, are specifically outlawed by ICTA for the Tribunal's purposes. Remarkably, ICTA deliberately provides for the admissibility of newspaper articles, film, radio and other media reports as evidence, notwithstanding the

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natural tendency in the press to exaggeration, and the fact that such material will inevitably be incapable of forensic scrutiny.

But there is yet worse to come: in the event of a controversial ruling by the bench, Article 47(3) of the Bangladesh Constitution, an amendment incorporated in 1973, removes any right for interlocutory appeal from the Tribunal to a separate or higher court. Indeed, the only right to appeal provided within ICTA is that against conviction and sentence to the Bangladesh Supreme Court. Whilst the Tribunal is empowered to entertain a review of its own decisions, results have proved predictable: the Tribunal has been disinclined thus far to overrule its own judgment.

The most egregious example of this up to now in Sayedee's case was the Tribunal's rejection of a petition for review of their earlier decision not to give clarification to the ICT's definition of crimes against humanity. In so doing, the Tribunal appears to have withdrawn the accused's right to be informed of the nature of the case against him, contrary to Article 14 of the ICCPR and, ironically, s16 of ICTA itself. As a consequence, it has permitted a case to proceed on the allegation of a crime that resembles something very different in 2011 to what it did when it first appeared at Nuremberg in 1946.

Crimes against humanity have traditionally encompassed offences such as murder, extermination, enslavement, deportation, imprisonment, torture, rape and persecution, amongst others. But the basic legal requirement for crimes against humanity per se has been a subject of debate. The precondition at Nuremberg was the existence of an international armed conflict between at least two states when the crimes were committed. But this requirement was absent from the 1994 ICTY statute's definition, a position confirmed in 2010 at the Extraordinary Chamber of the Courts of Cambodia (ECCC), which claims jurisdiction over crimes dating back to 1975. The ECCC case of Duch confirmed that the need for an armed conflict was dispensed with altogether, and replaced with the familiar chapeau requirements of a

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widespread or systematic attack directed against a civilian population on national, political, ethical, racial or religious grounds.

Leaving aside the fact that ICTA fails also to define the individual offences that may qualify as crimes against humanity (murder, extermination, etc) in contrast to the ICC and earlier ad hoc tribunals, it makes no attempt to clarify a definition of crimes against humanity per se. Does the court intend to apply the Nuremberg precondition of an international armed conflict, still applicable in 1971, or does it intend to employ the current definition of a widespread or systematic attack? To import the latter would be unlawful: the nullum crimen sine lege maxim enshrined within Article 15 of the ICCPR prevents retroactive application of law not in force at the material time. One would imagine the simple solution would be for the court to apply the law as it stood in 1971: namely the requirement of an international armed conflict. But this won't work either: on any view of the facts, the 1971 Liberation War was an internal, not an international armed conflict. Indeed, Bangladesh was not recognised as a sovereign state by any foreign nation until their ally India did so on 6 December 1971, 10 days before the war's end. The next to follow suit was East Germany on 11 January 1972: ergo the Nuremberg definition requiring an international armed conflict between at least two states cannot apply.

In other words, when it comes to trying crimes against humanity, the ICT is caught between two stools. On this analysis, it is surely disqualified from trying the crime at all. Unfortunately, owing to the amended Constitution's bar on interlocutory appeals, there is no higher court available to tell them so. Instead, the Tribunal is left with the indignity of entertaining charges on an indictment where nobody – not the prosecution, nor the defence, nor even the judges themselves – has a clue about what must be proved for a crimes against humanity conviction to stick. The Tribunal's announcement that they may at a later stage in the proceedings choose to adopt developments on the definition of crimes against humanity from recent tribunals adds insult to injury: the suggestion doesn't just amount to a tacit admission that

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they are undecided about the law, it also suggests the judges are open to making up the law as they go along.

One is tempted at this point to ask: how serious is the government-backed ICT about legality, or even the appearance of a fair trial? Again, there's worse to come: whereas Article 31 of the Constitution states "To enjoy the protection of the law, and to be treated in accordance with the law, and only in accordance with the law, is the inalienable right of every citizen", Article 47(3), as amended, effectively removes that protection from those charged under ICTA. Thereby, ICT suspects are rendered second-class citizens before the law. Just to emphasise the point, in proceedings brought against the amendment a Supreme Court judge held that a reasonable distinction could properly be drawn between the rights afforded to "ordinary citizens and other citizens accused of war crimes". All this acts as a grim reminder of the past: rather than Qamrul Islam's vision of a tribunal "exemplary for the world community", the provisions of ICTA and Article 47(3) of the Constitution chillingly create the perfect habitat for a political show trial, culminating with the provision of the death penalty.

Current Situation

On 3 October 2011, after 14 months in custody, Delwar Hossain Sayedee was finally charged with 20 counts of genocide and crimes against humanity. A petition to review the "framed" indictment, objecting to the Tribunal's failure to define the offences charged, and to duplicity and lack of specificity within the charges, awaits disposal. Meanwhile, four further Jamaat-e-Islami suspects, all of advanced age and now in custody for well over a year, remain detained without charge or any advance disclosure whatsoever.

At the time of writing (November 2011), Delwar Hossain Sayedee's trial for his alleged participation in the atrocities of 1971 is delayed pending a petition for recusal against the chairman of the bench following discovery of his involvement in a 1993 Commission of

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Enquiry into the alleged participation of several anti-Awami League figures. The defence were recently informed that the chairman has agreed not to sit on the Tribunal's deliberations into the matter. The 1993 Commission, which can hardly be said to have been independent, found that four of the five Jamaat suspects currently in detention were criminally liable for atrocities in 1971.

Examination of the Commission's report shows it to be one-sided and arbitrary. It appears to overlook both the limited influence of Jamaat as a political force in east Pakistan at the time as well as widespread accounts of Jamaat members and their affiliates offering protection to Hindus and others from attack and persecution by Pakistani military personnel. The outcome of the recusal petition is awaited with interest; the unexpected withdrawal of the chairman could be a serious setback to the government's intention to complete the process in time for the 2013 general election.

Despite Qamrul Islam's proud boast, the ICT has received nothing but criticism, raising alarm all over the world. So far, pleas for restraint from the US State Department, the International Bar Association, the International Centre for Transitional Justice, Human Rights Watch, Amnesty International, members of the UK House of Lords and the European Parliament have fallen on deaf ears. Widespread calls for ICTA to be amended in line with ICC Statute provisions and the repeal of Article 47(3) have been similarly ignored.

Today in Dhaka, opposition to the Tribunal is growing. Following a mass demonstration on 19 September in which hundreds were arrested and many injured, an arrest warrant was issued for the Jamaat detainees' Bangladeshi lead counsel citing involvement with the mob ringleaders. The authorities overlooked the fact that rather than being in Dhaka on 19 September, as the arrest warrant alleged, the suspect was in Europe, where he had been for some time. More recently, a key defence witness in the Sayedee case, ironically a former nationalist freedom fighter, was arrested on unknown allegations. Separately, five

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other defence witnesses were also arrested and urged not to involve themselves in the trial.

Enthusiasm for the trials within government circles is unbridled: in an address to the UN's General Assembly in New York in September 2011, Prime Minister Sheikh Hasina signalled not only her determination to carry on regardless but also her confidence in the ICT's outcome, when, speaking of the accused, she declared: "Their eventual punishment will strengthen our democracy, demonstrating that the state is capable of just retribution." The prosecution are equally bullish: in November ICT prosecutor Rana Dasgupta claimed: "One can say 2012 is the year of verdict of the war crimes trial and 2013 the year of verdict execution."

A Disaster in the Making?

As part of the UK-based defence team instructed to advise the Jamaat-e-Islami detainees, I visited Dhaka in March 2011. I encountered an austere, foreboding atmosphere that could almost be described as Orwellian. Leaving my hotel I was tailed by hapless Bangladeshi security operatives; armed militia roamed the streets; massive murals celebrating the freedom fighters' sacrifice hung from tall buildings in a throwback to Soviet times. As the trials draw near, the pro-government press is increasingly fervent in its vitriolic attacks on the "war criminals"; last month a national daily's report on an Awami League rally featured lurid photographs of the simulated public hanging of the Jamaat detainees.

One must not prejudge, but appearances suggest that the ICT is the focal point for a government-led crusade seeking vengeance rather than reconciliation amidst a political culture that brooks no consent. Revenge, it seems, wins votes. But tension is mounting: it is increasingly likely that these trials will become a rallying point for both secular, Awami League nationalists and anti-government, largely Islamic opposition groups. In declining socio-economic conditions

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one can only hope the trials do not trigger a call to arms by extremists on both sides. Such an outcome would be a grievous betrayal not just of the rule of law, but of the victims of the conflict. For what a tragedy it would be if, 40 years after the event, these trials were to lead to the same hatred, chaos and impunity they were supposed to lay to rest.

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Note:

1. This article was written before the trial of Sayedee proceeded and the Tribunal convicted and sentenced him to death.
2. The application to review the charges and the application for recusal of the Chairman were rejected.

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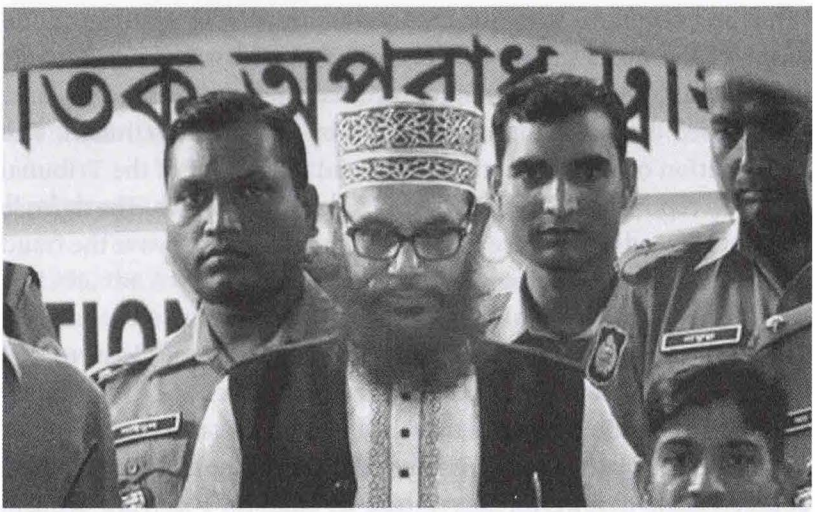
CHAPTER 3

THE TRIALS



Allama Delwar Hossain Sayedee

The first trial in the Bangladesh International Crimes Tribunal was the prosecution of Maulana Delwar Hossain Sayedee, who is the deputy leader of Jamaat-e-Islami Bangladesh. It has attracted great interest both locally and overseas due to the gross unfairness in the trial process and the government conspiracy to convict him exposed by the Skype scandal. The trial will be

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remembered as the gravestone marking the death of an independent judiciary in Bangladesh.

The investigation officer has conducted the investigation fraudulently and fabricated evidence to convict Sayedee. He was given a very short time to prepare his defence before the trial and the prosecution did not make full disclosure of their case to the defence. The Tribunal restricted the defence counsel from cross-examining the prosecution witnesses on their previous inconsistent statements and relevant documents. Prosecution witnesses were either rewarded or forced to give false evidence against Sayedee.

When prosecution witnesses refused to testify according to the script of the investigation officer, he submitted written statements in their names and the Tribunal received them as evidence against the accused despite vigorous objection by the defence counsel. The investigation officer had committed fraud in the face of the Tribunal by falsely reporting that these witnesses were unavailable. The defence was not allowed to produce documentary evidence to prove the fraud perpetrated by the investigation officer.

The defence was given only one-fifth of the time given to the prosecution to rebut their case. Defence witnesses and their family members were threatened so that they would not testify on behalf of the accused. A proposed prosecution witness, Shukho Ranjan Bali, courageously, despite threats, agreed to become a defence witness but he was abducted by the police at the Tribunal premises and he remains a disappeared person.

That the trial before the Tribunal is nothing but a show trial like the Nazi show trials has been irrefutably established by the recent publication of the Skype and email communications of the former Chairman of the Tribunal Justice Nizamul Huq with the expatriate Bangladeshi lawyer Ahmed Ziauddin. They reveal that he was conspiring with the Government to fast-track the case and convict Sayedee. He was

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guiding the prosecution on the conduct of the case and the orders and judgment issued by him were drafted by Ziauddin.

Brief Profile

Allama Delwar Hossain Sayedee is the most popular Islamic scholar from Bangladesh. He devoted his life to disseminating the light of the Qur'an all over the world and is an eloquent speaker, popular leader and organiser. He joined Bangladesh Jamaat-e-Islami as primary member in 1979. In 1989 he was elected to the Central Committee of Jamaat. He was elected a Member of Parliament from his Pirojpur Sadar constituency twice, in 1996 and 2001. He has authored 72 Islamic books including *Tafseer of Quran, Biography of Prophet Mohammad (PBUH), Qur'an and Science, Women's Rights in Islam, Workers' Rights in Islam,* and *Political Views of Islam.* He is also actively involved in many charitable activities and educational institutions.

Background to the Case

In 1996, the Awami League coalition, in which Jamaat was a partner, won the national elections. In the next national elections held in 2001, the Awami League suffered a disastrous defeat due to Jamaat's alliance with the BNP. From then on, the Awami League started a propaganda war against Jamaat and its leaders, accusing them of committing war crimes during the liberation war in 1971, in order to break up its alliance with the BNP. The Awami League won a resounding victory in the 2008 elections and, after forming the government, it started a crackdown on Jamaat and its leaders.

On 24 July 2009, Sayedee was stopped at Dhaka Airport and prevented from going to Saudi Arabia to attend a seminar where he was to be the chief guest. He filed a writ petition before the High Court Division seeking an order directing the Government to allow him to leave and re-enter Bangladesh. The Attorney General strenuously opposed the writ petition and informed the court that the petitioner may be

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committed to trial for war crimes. The judge rejected the Government's plea and found that the learned Attorney General "could not show a single scrap of paper involving the Petitioner in acts which may be called war crimes". The court directed the Government to allow the petitioner to leave and re-enter Bangladesh.

Despite the court's finding that there was no evidence of Sayedee's involvement in war crimes, immediately after the judgment was passed, the Attorney General informed the press that cases alleging war crimes may be filed against him at any time. The same evening, on the instruction of the Government, Manik Poshari, who later testified as a prosecution witness at the trial, filed a complaint against him alleging war crimes for the first time in the last 40 years.

The Government's appeal to the Appellate Division was nevertheless dismissed, with the court observing that "if the Government wants to stop the Petitioner from leaving the country then it must start a specific criminal case against him and get custodial order by a court of law". The next week the Government induced Mahbub Alam Hawlader, who later testified as a prosecution witness at the trial, to file the second complaint against Sayedee alleging war crimes. Fourteen other false complaints against him were filed on the instigation of the Government. Despite being persecuted by the Government, Sayedee went abroad for the conference and returned to Bangladesh.

Investigation

In March 2010 the Government created the Investigation Member Agency to investigate crimes under the 1973 Act. Helal Uddin, a member of the Awami League, was appointed as the investigating officer to investigate the complaints against Sayedee. The evidence recorded shows that Helal was biased and dishonest in his investigation, and fabricated evidence to falsely incriminate him. He refused to record statements from eyewitnesses who were not willing to accuse Sayedee. After nearly a year of investigation, he submitted

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his report to the prosecutor. Based on this fabricated report, on 3 October 2011, the Tribunal indicted Sayedee with 20 counts of crimes against humanity and genocide, to which he pleaded not guilty. He was repeatedly denied bail and kept in detention for over 14 months before he was indicted, which the United Nations Working Group on Arbitrary Detention has criticised as being "arbitrary and in violation of international law".

Trial Proceedings

The concern expressed by the international community, human rights organisations, jurists and prominent lawyers that the accused before the Tribunal would not get a fair trial under the 1973 Act and the Tribunal Rules, unless they were amended to incorporate international standards, has been justified by the way the Tribunal conducted Sayedee's case. Not only did it not comply with international standards but it also violated provisions of the 1973 Act and the Rules to the disadvantage of the defendant. The Tribunal rejected an application by the defence to direct the prosecution to make full disclosure of its documents, and received as evidence "witness statements" without calling the makers to testify. It limited the number of defence witnesses to 20 although the defence wanted 46 witnesses. The Chairman interfered in the cross-examination and pressured the defence to close its case.

Non-disclosure of Prosecution Documents

The 1973 Act and the Rules require the prosecution to furnish to the Tribunal and the accused copies of the documents which the prosecution intends to rely upon at least three weeks before the commencement of the trial. The defence is then expected to review the disclosed documents, formulate its case and disclose it to the Tribunal and prosecution within three weeks, a time limit grossly inadequate by international standards.

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The Investigation Agency submitted its report to the Tribunal consisting of 14 volumes containing 4,074 pages but the prosecution chose to rely upon only 397 pages including some illegible documents. The remaining 3,677 pages of documents, which included some seizure list documents, were not served upon the defence. Applications for disclosure of 41 undisclosed seizure list documents and exculpatory evidence that the prosecution was not intending to use were rejected, on the ground that the defence was not entitled to get copies of those documents although they were material to the defence. These documents were allowed to be put in as exhibits by the prosecution despite strong objection from the defence.

The report of the investigations officer, which is a crucial document to show the mode and authenticity of his investigation, was not given to the defendant. The Tribunal took cognizance of the offences and framed the charges after examining the investigation report. The defendant, under the Rules, was entitled to get a copy of the report since the same was being used against him. Applications by the defendant to obtain the report were rejected on the ground that the identities of witnesses would be disclosed, endangering their safety and security. The defendant badly needed a copy of the report to enable his lawyers to cross-examine the investigating officer. Therefore, another application was filed seeking an order to inspect the report excluding the parts containing particulars of the prosecution witnesses but, again, the Tribunal rejected it. As a result, the defendant was denied the opportunity of presenting an effective defence to the charges.

The Tribunal, on the defendant's applications, refused to order government agencies to produce the 1972 first information report and other documents in their custody connected with the killing of Ibrahim Kutti. Those documents were highly material to show that the defendant was not involved in the killing.

Despite many handicaps faced in the preparation of the defence, the defendant's lawyers, through effective cross-examination of

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prosecution witnesses, were able to expose the contradictions in their statements and weaknesses in the prosecution case. But this was seriously hampered by frequent interruption by the judges. They were not allowed to cross-examine the witnesses on their previous inconsistent statements, which was essential for testing their credibility. The investigating officer was not allowed to be cross-examined on at least 200 documents exhibited by him. The Tribunal pressured the lawyers to shorten the cross-examination in violation of the right to cross-examination under the 1973 Act. The oppressive conduct of the judges has cast grave doubts on their impartiality.

Fraud of the Investigation Officer and the Prosecution

The prosecution applied to put in as evidence statements allegedly made by 48 prosecution witnesses who were supposed to be unavailable and could not be brought to the Tribunal without undue delay and expenses. The application was supported by the report of the investigating officer which, despite repeated requests, was not given to the defence.

Before the hearing of the application, many national daily newspapers reported that these witnesses were available but not willing to give false evidence against the defendant. It was reported that they had not given any statements to the investigation officer and that he had concocted statements in their names. In the reply to the prosecution application, the defendant annexed the newspaper reports as exhibits and sought an order that these witnesses be called before the Tribunal so that they could tell the truth.

Any judge worthy of the position he was holding under the Constitution, and committed to protecting the integrity of the criminal justice system, would have immediately ordered an inquiry to establish whether there was any truth in the news reports which raised allegations highly damaging to the judicial process. Instead of making such an order, however, the Tribunal, at the request of

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the prosecutor, allowed 15 alleged witness statements to be put in as evidence without having to produce the witnesses for cross-examination. It is unprecedented for a tribunal of this nature to receive as evidence the written statements of witnesses allegedly recorded by the investigating officer concerning the "act and conduct of the accused relating to the charges".

Among the 15 witness statements admitted as evidence were the alleged statements of Ganesh Chandra Saha and Shukho Ranjan Bali. Saha's alleged statement implicated the defendant in the murder of his mother Vagirothi but he appeared before the Tribunal as a defence witness and testified that he never made any such statement to the investigating officer. Thus, Saha's alleged witness statement was a fabrication.

Bali's alleged witness statement implicated the defendant in the killing of his brother Bisa Bali. He came to the Tribunal to testify as a defence witness that he had never made such a statement to the investigating officer accusing the defendant of the killing. He had denied, in TV interviews and the print media, implicating the defendant in the killing. But, before he could testify, he was abducted by law enforcement agency officers and he has been disappeared. When the abduction was reported to the Tribunal it did not order any inquiry or take any action based on the footage from the CCTV camera in the court premises. A habeas corpus application before the High Court, with the Attorney General opposing it, apparently, to protect the abductors, has been stagnating.

After the Tribunal had allowed the prosecution to put in as evidence the 15 alleged witness statements, one of the renowned national dailies, *Amar Desh*, published a report stating that the prosecution had misled the Tribunal by representing to it that their witnesses were unavailable. According to the report, they were, in fact, under the control of the prosecution and the Investigation Agency. They were brought and kept in the witness "safe house" and if they did

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not cooperate with the prosecution to give false evidence against the defendant they were allowed to return. The reporter obtained this damning evidence from the general diary, attendance register and food register kept in the safe house. These documents revealed that the Investigation Agency and the prosecution were lying about the whereabouts of the prosecution witnesses. Neither the prosecution nor the Investigation Agency has denied the report.

Subsequent to the *Amar Desh* report, some local TV channels telecasted interviews with some of those 15 witnesses who confirmed that they had not given any statement to the investigating officer implicating the defendant in the alleged crimes. Based on the compelling evidence of fraud practised by the prosecutor and the investigating officer upon the Tribunal as disclosed in the news report and TV broadcasts, which became public knowledge, the defendant applied to the Tribunal to review its previous order admitting the 15 witness statements. The *Amar Desh* report, the TV interviews and the safe house documents were put in evidence in support of the defendant's application. The safe house documents conclusively proved the presence of the "unavailable" witnesses on various dates in the safe house. The judges, while expressing shock after seeing the documents, disregarded them and rejected the defendant's application. The reason given was that the Tribunal would not adjudicate on the genuineness of the safe house documents and that the onus of proving it was upon the defence. While millions of people in Bangladesh were convinced of the fraud practised upon the Tribunal, the judges were behaving like ostriches burying their heads in the sand and refusing to face reality.

Despite the unreasonable conduct of the judges, the defence took up their suggestion to prove the genuineness of the safe house documents. They made many applications for that purpose but all of them were capriciously rejected. For example, the rejected applications include the following seeking court orders to:

- call for records to confirm the mobile numbers and badge

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numbers, recorded in the documents, of police constables and officers in the safe house, which would have easily proved the genuineness of the documents

- draw up proceedings against the investigation officer for committing fraud upon the Tribunal
- obtain the investigation reports on which the Tribunal relied to make the order admitting the 15 witness statements and to cross-examine the investigation officer
- summon 38 persons whose names appeared in the safe house documents to attend and testify as Tribunal witnesses
- summon 38 persons whose names appeared in the safe house documents to attend and testify as defence witnesses
- direct mobile phone operators to produce before the Tribunal telephone call lists of the mobile numbers of the concerned officers of the safe house. This was necessary to prove the genuineness of the entries in the safe house documents.
- admit the safe house documents under Section 19(1) of the 1973 Act read with Rule 54(2) and 44 of the Rules of Procedure and mark them as exhibits.

The defendant sought to take all possible steps to prove the genuineness of the safe house documents but the Tribunal prevented him from doing so. The admission of the safe house documents as evidence was necessary, not merely on the issue of admissibility of the 15 alleged witness statements, but, more importantly, on the issue of the integrity of the investigation and prosecution of the case against the defendant. These documents conclusively prove that the investigating officer committed fraud on the Tribunal. They further prove that other prosecution witnesses were either forced or rewarded for giving false evidence. Why did the Tribunal reject this crucial

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evidence? Did the judges have an ulterior motive? The publication of the Skype conversations and emails between the then Chairman of the Tribunal and the expatriate Bangladeshi lawyer Ahmed Ziauddin provides the answer.

Conspiracy to Convict

The Skype and email communications between the former Chairman of the Tribunal Justice Nizamul Huq and Ahmed Ziauddin, published in the British weekly *The Economist* and Bangladesh daily *Amar Desh* in early December 2012, revealed a vile conspiracy involving Justice Huq, Ziauddin, the prosecutors and Government ministers to convict the defendant. Ziauddin, who has been campaigning for bringing war crimes charges against senior Jamaat leaders including Sayedee, has been directing the trial from behind the scenes. He was advising the Tribunal judges and the prosecution at the same time. The published communications reveal that Justice Huq regularly had secret meetings with members of the prosecution and advised them to fill in gaps in the prosecution case.

The order of the Tribunal framing charges against the defendant was drafted by Ziauddin. In an email dated 2 October 2011 he sent to Justice Huq the charge framing order which was duly delivered the next day. Framing charges is a judicial function and it is highly improper and unlawful for the judges to delegate it to another person, especially one who is guiding the prosecutors and who is a sworn enemy of the defendant.

The defendant filed an application for the recusal of Justice Huq on the grounds that he was a member of the Secretariat of the People's Inquiry Commission, an unofficial body that investigated allegations of war crimes against the defendant and found him guilty. The other two members of the Tribunal passed an order leaving the matter of recusal to the "good conscience" of Justice Huq. When he did not recuse himself, the defendant filed another application asking the Tribunal to provide and record reasons as to why he continued to sit as

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Chairman of the Tribunal despite the clear evidence of his bias against the defendant. The order stating the reasons for refusing recusal was drafted by Ziauddin, sent by email to Justice Huq, and delivered the next day by the Tribunal.

Ziauddin exerted such a great influence on the Tribunal that he even drafted some amendments to its Rules of Procedure. On 9 November 2011, he sent by email to the former Registrar of the Tribunal a draft amendment of the Rules which curtailed the right of the defence to get particulars of the prosecution witnesses. This was later on implemented in the third amendment of the Rules.

The Skype conversations reveal extensive interference in the judicial process. They show that Government ministers wanted quick verdicts in the cases before the Tribunal and that Justice Huq was prepared to give judgment against the defendant to please them. The State Minister was organising a meeting of all the judges of the two tribunals[1] and the Law Minister to ensure quick judgment. The emails show that Ziauddin had been preparing the judgment convicting the defendant even before the close of the defence case.

Justice Huq stated in one conversation that he had been promised that he would be elevated to the Appellate Division of the Supreme Court if he could give judgment against Sayedee, Professor Ghulam Azam and Salahuddin Quader Chowdhury.

Thus, the Skype and email communications reveal that the Tribunal judges were acting under orders from the Law Minister and State Minister and conspiring with them, the prosecutors and the Jamaat hater Ziauddin to convict Sayedee and the other defendants. One can understand now why the Tribunal prohibited the publication of the communications and was hostile to the defence during the trial, obstructing every move taken to prove the defendant's innocence.

1 Two tribunals – Tribunal-1 and Tribunal-2 – were set up in order to expedite the hearing of the cases.

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Verdict

After the publication of the Skype and email communications, the Chairman of the Tribunal resigned and it was reconstituted with a new Chairman. The Tribunal had been so badly scandalised by the communications that to do justice a retrial before a tribunal with truly independent judges was imperative. The defendant applied to the reconstituted Tribunal for a retrial based on the improper and illegal conduct of the Chairman and exhibited the Skype conversations and the emails published in the media in the application. The judges refused to consider the damaging communications and rejected the application.

None of the three judges hearing the case after Justice Huq resigned had heard the full evidence and therefore they were not in a position to assess the credibility of the witnesses and come to a just decision, yet they rejected a retrial and proceeded with the case. On the improper conduct of the Tribunal judges in refusing a retrial, Human Rights Watch commented:

> "It would be highly irresponsible and unprofessional for a verdict to be delivered when none of the judges heard all the evidence and were unable to assess the credibility of key witnesses, particularly in a trial involving 40-year old evidence and complex legal issues. Before the chair of the court resigned for improprieties only one judge had heard the totality of the evidence, and now even that one judge is gone. A new trial is the only way for the court to preserve its integrity."

After hearing submissions, the reconstituted Tribunal delivered a verdict convicting the defendant and sentencing him to death for the killing of Bisa Bali and Ibrahim Kutti. The conviction and the death sentence were without any credible evidential support.

Bisa Bali's brother Shukho Ranjan Bali had publicly stated over television and the print media that the defendant was not responsible

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for the killing of his brother. He also denied making a statement to the investigating officer implicating the defendant in the crime. He was called as a prosecution witness but he refused and became a defence witness. The Tribunal admitted his alleged witness statement without calling him as a witness and although he had publicly denied making it. When he came to the Tribunal to give evidence which would have exposed the hollowness of the prosecution case and the fraudulent conduct of the investigating officer, he was abducted by plainclothes policemen and the Tribunal refused to take any action to investigate the matter. On what basis did the Tribunal find the defendant responsible for the killing? The witness statement fabricated by the investigating officer!

The wife of Ibrahim Kutti, Momtaz Begum, in her first information report made to the police in 1972, had accused 14 people including Pakistani soldiers of killing her husband. On 16 July 1972, she filed a case in Pirojpur, the defendant's home district. At least four persons were given jail terms but there was no mention of the defendant or his alleged role in the killing in that case. The day of the killing of Kutti was mentioned as 1 October 1971 in that case but as 8 May 1971 in the charge sheet of the defendant in the Tribunal. The wife, father, mother-in-law, brother-in-law and sister-in-law of Ibrahim Kutti are all alive. Why were they not brought to the Tribunal to testify? Why did the judges not consider the certified copies of the charge sheet and documentary evidence in the earlier case submitted to the Tribunal by the defence? All evidence regarding that case was recorded in the register of the Pirojpur police station and yet the Tribunal refused to order the relevant authorities to produce the register despite repeated applications by the defence. The Tribunal judges have tried to suppress the truth and condemned an innocent man to death.

Abdur Razzaq, the senior defence counsel in the case, expressed shock at the verdict and said that the evidence produced in the Tribunal would not justify imprisoning Sayedee for even a minute, let alone a death sentence. Sentencing Sayedee to death on charges without any

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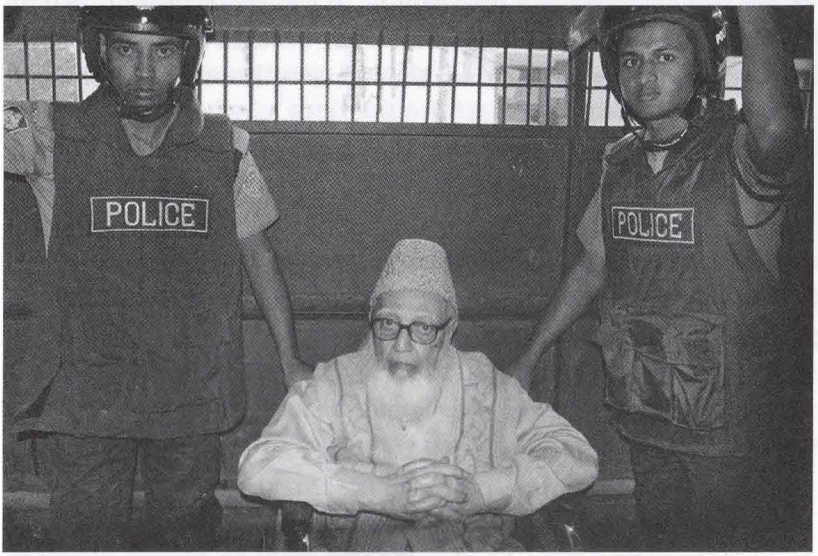
credible evidence is the result of a conspiracy at the highest level of the Government to commit judicial murder of senior Jamaat leaders.

Professor Ghulam Azam



In the case against Professor Ghulam Azam, a leading figure in the Islamic and democratic movement in Bangladesh, the prosecution has utterly failed to produce any evidence required for conviction and punishment in a criminal proceeding. A judgment must be based not on emotion but on the evidence. The case against Azam on the charge of his alleged involvement in crimes against humanity is full of emotion and concocted stories but what it is missing is evidence.

Azam has been charged with the murder of police inspector Miru Mia on the basis of an alleged letter written by the former. However, the alleged letter has not been recorded as evidence in the Tribunal. None amongst the collector, conveyer or bearer or the addressee of the alleged letter have been called as witnesses to the Tribunal. This means that the prosecution has not been able to present any evidence. They have merely concocted baseless stories.

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It is stated that Azam conspired with Tikka Khan. However, no witness has confirmed this and no documents have been submitted in support of this. A political party chief can surely meet an army general of the country at a discussion table. Nobody can deny that Sheikh Mujib also held meetings with Bhutto. What matters here is that no evidence was produced and no witness was brought in the Tribunal to prove that what Azam discussed with Khan constituted conspiracy.

Azam has also been charged with the murder of 38 freedom fighters in Brahminbaria jail at his written instruction. However, no evidence has been presented in the Tribunal as to who was the messenger of his written instruction, to whom it was addressed, and what was written in that letter. Furthermore, no existence of any such letter has been established. Superior or command responsibility only applies to the military and not to civilians.

The defence counsel had presented a list of 2,939 witnesses in defence of Azam. The prosecution protested the list, at which the court told the defence to present a fresh list of no more than 12 witnesses. No such arbitrary limit was placed on the prosecution, who presented 16 witnesses – four more than the defence. It is also interesting that with no limit placed on them, the prosecution was only able to present 16 witnesses against Azam's 2,939. It is clear how partial and unfair this court is in openly pandering to the prosecution and hindering the defence. Later the court forced the defence to conclude Azam's defence on a single witness.

None of the prosecution's documents was prepared by the investigating officer, Matiur Rahman. Belgian resident Ahmed Ziauddin created them in connivance with the prosecution and submitted them to the Tribunal in the name of the prosecution. This is fraud. Whatever Justice Huq issued in the Tribunal, including the charge sheet and orders, nothing was the result of his own deliberation. Everything was prepared by Ziauddin from abroad. Nevertheless, Justice Huq later passed those off as the outcome of his own deliberation. By this he

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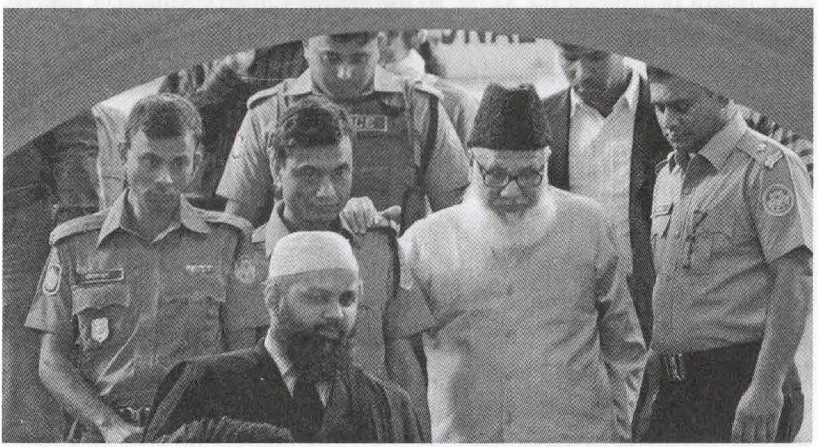
had committed fraud and misconduct. As such this trial is entirely discredited.

Five drafts of the charge sheet against Azam came from Ziauddin. Furthermore, it is Ziauddin who all the way from Belgium determined who should be selected as witnesses and what statements should be solicited from the witnesses etc. On 12 May 2012, Ziauddin sent the last draft of the charge sheet against Azam via email to Justice Huq. Justice Huq copied the same draft in verbatim and issued the charge sheet order against Azam the following day.

As such, the Tribunal has been heavily manipulated from abroad by a person with no official position in the court and whose role was kept concealed until it was exposed by the Skypegate scandal. Following the scandal, Justice Huq resigned, yet these fraudulent activities were not rejected and the trial continued as if nothing happened. Under such circumstances, the trial of Azam cannot be considered credible or fair.

Maulana Motiur Rahman Nizami



The Ameer of Bangladesh Jamaat-e-Islami Maulana Motiur Rahman Nizami is a world-renowned Islamic leader. His pioneering role in the

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struggle for democracy in the country will be long remembered. He has always been in the forefront of many popular movements, including the Islamic education movement, anti-dictatorship movement, and the movement for the introduction of a caretaker government. He was first elected a Member of Parliament in 1991. After his re-election in 2001, he was appointed first as Minister of Agriculture and then as Minister of Industries. During his period as government minister, he initiated many activities to develop economically backward areas. He is now facing trial on trumped-up war crimes charges before the ICT.

The following is the translated text of his speech during the trial on 28 May 2012:

Alhamdulillah Wassalatu Wassalamu Ala Rasulillah Wa Ma Tawfiqee Illa Billah. Fa Alaihi Tawakkaltu Wa Ilaihi Uneeb

I want to categorically inform the court: during the war of liberation in 1971 I was not involved in anything else other than politics. Politically, we demanded handing over power to the elected representatives. Jamaat-e-Islami demanded the same, so did Islami Chhatra Sangha. I believe, along with the rest of the world, that tragic incident would not have happened had power been handed over according to the results of the elections of 1970. At the same time history also knows who impeded the power transition after the election. Who obstructed the transfer of power? No one can show that Jamaat-e-Islami voiced anything that may have hindered the transfer of power. As the President of Islami Chhatra Sangha, I was the first to protest against what Mr. Bhutto said. It was Mr. Zulfikar Ali Bhutto who obstructed the transfer of power. He was used by Yahya Khan or Yahya Khan used him; or they did it together. However, we had no connection with the causes that created the circumstances for genocide.

By chance, I happened to be the President of Islami Chhatra Sangha Pakistan at that time. I was President till the last week of September. In a

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conference in Multan from 25-30 September, I resigned from my position following an election. I had no activities afterwards. I used to work in a research academy as a research fellow. The incident you brought against me in charge number 16, I was not the President of Islami Chhatra Sangha at that time; neither was I a member of that organisation; nor did I hold any position in Jamaat-e-Islami then. Therefore, I did not have any role at that time. I have been alleged to be the commander of Al Badr; [but] the newspaper clippings that have been provided as evidence, none of those clippings have the designation of Al Badr commander or Razakar chief next to my name. Page 36 of the book that has been handed over to me as formal charge clearly states that the former Ansar force was transformed into Razakar; all resources of Ansar force were handed to Razakar force and the Ansar officers were kept as officers of Razakar force. Therefore, how can I have the scope of being a commander? The book you prepared proves that I had no scope for that.

I visited some places as the President of Chhatra Sangha and delivered speeches; however, not all the statements in the newspapers are mine. Your book also has that evidence. There is a notion of one speech of mine in Jessore. I spoke of verses 111 and 112 of Surah Tawbah; you will notice that there is partial translation of verse 111. [But] there is not a single reference to verse 112. This proves that newspapers do not record all the statements of a speaker. Therefore, if the same happens in other cases where statements that were not mine were attributed to me, it would not be strange.

[Regarding] the criminal offences that have been mentioned, I am transparent to my conscience, I am transparent to Allah that I had a political role but I was not involved in any immoral and inhumane activities by the grace of Allah; Allah did not involve me in any such thing. The incidents that have been mentioned here were not perpetrated in my presence, not committed in front of me, not done in my knowledge, not executed by my consent and I was not even aware of them. Honourable court, I am coming to the point that I visited some place; however, I am the only son of my parents and I did not even go to visit them during

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the war of liberation in 1971; I did not stay in my locality. I did not go to my residence let alone to the greater Pabna area. Therefore, the few forces that were formed there, I can tell with full responsibility these are nothing but the most heinous lies in history. There is no question of my involvement in any of those. I did not even know many of these places. I visited many places before the elections in 1986; I did not know these places before that time. It is seen here that in an incident in Karmoja I [was alleged to have] arranged a meeting in retaliation for not voting in my favour. I did not even take part in the elections of 1970! I was not a candidate in that election, [so] where does the question of voting in my favour come in? And where does the question of retaliation for not voting in my favour come in?

If given a chance to talk, there are many things to talk about; I clearly want to say that when my name was published in the newspaper in 1988 as the Secretary General, my wife said, "Someone called claiming to be a friend of yours." What did he say? He asked her, "Do you wish to be a widow?" She questioned him as to why he was asking that. He replied, "We will kill your husband in front of you." She said, "Okay, do that if you can." He replied, "Why do you accept that so easily; keep him away from assuming the responsibilities of the Secretary General. Keep him away from being active in the politics of Jamaat-e-Islami." My wife replied, "He does what he feels to be right, I cannot prevent him from doing that."

Honourable court, afterwards, I took part in the parliamentary election in 1991 and was elected as a Member of Parliament and elected as the leader of the parliamentary party. Ghatak Dalal Nirmul Committee was formed in 1992. We had to struggle against the activities of this Committee in parliament, in the Supreme Court as well as in the streets. As General Secretary and leader of the parliamentary party I had to play a role. I came to the centre of attention from that time.

Afterwards, the incident of Karmoja that was described, is an interesting case. In November of 2000 the result of the election for the Ameer of Bangladesh Jamaat-e-Islami was declared and I was elected Ameer for the

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first time. After the election, it was decided that I would be sworn in on 6 December. On that day, some bones were dug up from an old grave and shown on TV, which was only to defame the new Ameer of Bangladesh Jamaat-e-Islami. No one had brought up this incident before that day. Besides, Karmoja lies in the entry point of my constituency Santhia thana. I go here via that area, nevertheless, no one ever brought to me such allegation. They concocted this incident so that I could not enter my constituency. But, by the grace of Allah, in the following election I received the highest number of votes from that constituency.

Honourable court, no party or individual was identified as a war criminal because of the political role. Not only army but including the auxiliary force, a total of 195 individuals were identified as war criminals. Those who were the members of Malek cabinet, they were not included there. No member of the Peace Committee from the central to the district level was included there. Politically, Sabur Khan was a top leader; the founder of Bangladesh, the late Sheikh Mujibur Rahman, himself freed him from prison and sent him home in a vehicle. Therefore, I do not think that there is any scope for identifying someone as a war criminal or committing a crime against humanity because of political role. I read in the *Holiday* magazine before being arrested that 195 individuals were set free to save the leadership of Mr. Zulfikar Ali Bhutto. I mentioned a while earlier that Mr. Zulfikar Ali Bhutto is the actor behind the genocide. I can clearly remember that when the assembly was postponed on 1 March, there was a cricket match going on in the stadium that day. The spectators took to the streets leaving the game and chanted, "Kick Bhutto in the head, free Bangladesh." That same Mr. Bhutto came to Bangladesh on a state visit in 1974 and received an unprecedented reception. Because of the large crowd, he was taken to the [Savar] monument not by road, but flown there by helicopter. These are parts of history.

Honourable court, the anger at me grew to some extent as I became a minister following the election in 2001; I had come to attention after being elected the Ameer of Jamaat, I came to further attention after becoming a minster. But I want to categorically state that as a minister I never acted

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against the sovereignty or interest of the country. While I was the Minister of Agriculture, saplings of fruit trees were added to the tree plantation campaign, as a result of which the production of indigenous fruits increased twofold. I was then transferred to the Ministry of Industries; after 12 years the sugar industry turned into a profitable industry.

Honourable court, no government is the last government and no judgment of the world is the final judgment; there will be another judgment in the hereafter. Everyone including you and I will have to face that judgment. How were the witnesses for this trial assembled! How were the complainants gathered! How was a vindictive campaign of politics of vengeance perpetrated in the name of investigation!

Honourable court, I would like to request you; you have performed the Hajj while assuming that position. You have visited the shrine of the Holy Prophet (peace be upon him); I would like to bring forward two Hadith of the Holy Prophet (peace be upon him). One is: it is adequate for an individual to be a liar, who states whatever he hears. According to this statement of the Holy Prophet, rumours cannot be used as evidence in trials. I have a Kamil [equivalent to Masters] degree in Islamic jurisprudence. Based on that, I am stressing on this point. The second Hadith is regarding the responsibility, duty and honour of judges. There are three categories of judges: judges belonging to the first class are those who unearth and realise the truth and give verdicts in favour of that, they will go to Heaven. There is another category of judges, who understand the truth but give verdicts against it; they will go to Hell. The last category of judges who give verdicts without understanding anything, they also go to Hell. I wholeheartedly pray for you who are responsible for this tribunal; in the words of the Holy Prophet may Allah give you the opportunity to become judges belonging to the first class and save you from becoming judges of the second and third categories.

I rely on Allah. O Allah! You judge the truth among us. Truly, Allah is the best arbitrator.

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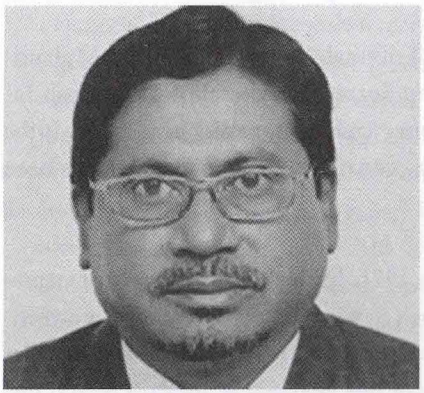
Muhammad Kamaruzzaman



Muhammad Kamaruzzaman, the senior assistant secretary general of Bangladesh Jamaat-e-Islami, was arrested on 13 July 2010 and detained for over a year without being formally informed of the charges against him. His detention was criticised by the United Nations Working Group on Arbitrary Detention as being disproportionate and in violation of human rights conventions. He was convicted and sentenced to death on 9 May 2013 by the International Crimes Tribunal-2. Two of the judges, Chairman of Tribunal-2 Justice Obaidul Hassan and Justice Shahinur Islam, were implicated in the conspiracy exposed by the Skype scandal. The Skype conversations and emails show that Ziauddin, the expatriate Bangladesh lawyer from Belgium orchestrating the trials secretly, and Justice Huq, former Chairman of Tribunal-1, had approached Justice Hassan to influence the proceedings in Tribunal-2. In a Skype conversation on 16 October 2012, Ziauddin told Justice Huq that Justice Shahinur Islam, an Awami Leaguer, fell on Ziauddin's feet and asked for his blessings. He wanted Ziauddin's recommendation for a job in the International Criminal Court. Given the lack of integrity and independence of the judges, the guilty verdict and death sentence meted out to Kamaruzzaman came as no surprise.

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The following is the text of a press statement issued by Kamaruzzaman's defence team on 9 May 2013, the day of his conviction:

> Today, the International Crimes Tribunal-2, Dhaka convicted Muhammad Kamaruzzaman, the Assistant Secretary General of Bangladesh Jamaat-e-Islami, of committing crimes against humanity in 1971. He is the third such leader of the party to be convicted. Kamaruzzaman has been sentenced to death.
>
> Kamaruzzaman was a teenager in 1971. In the history of trials of crimes against humanity and war crimes (starting from Nuremberg) no teenager has been charged. The level of criminal responsibility/liability that has been placed on the shoulders of this teenager is unheard of and unprecedented in the seven major war crimes trials since Nuremberg. The sole reason for the charge against him is that today he is the Assistant Secretary General of Jamaat, a major opposition political party. His only offence is that he is a leader of this party.
>
> We are appalled and shocked by the verdict. The prosecution had clearly failed to prove its case. Its star witness, Mohon Munshi, had been exposed to have contradicted himself at various stages of his deposition... he had given three different dates of occurrence for the Shohagpur Massacre and also for the killing of Golam Mostofa. This prosecution witness had also made statements which even the Tribunal had thought were highly improbable. The witness gave evidence that Kamaruzzaman – then a teenager – had control over superior officers of the Pakistan Army, something which is impossible in a modern military structure. Also, prosecution witnesses who had claimed to be freedom fighters were not only revealed to have been "fake" but also involved in criminal activities. Each and every witness had been exposed. Moreover, the vast majority of the prosecution case was dependent on hearsay, indicating the weakness of their case. It is inconceivable how a court of law could convict on the basis of such weak and very often contradictory and improbable evidence.

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Further, the procedural unfairness in these trials has rendered the verdict unsafe. Although the prosecution was permitted 18 witnesses, the defence was restricted to just five. Moreover, although the Investigation Agency and prosecution were given 1½ years to prepare their case, the defence was only given four weeks. Also, the Tribunal forcefully closed the defence's cross-examination of the investigating officer, who was one of the most important prosecution witnesses. And most importantly, cognizance of the offences against Kamaruzzaman had been taken by a bench which included Justice Md. Nizamul Huq, a judge whose integrity and independence were severely undermined in the disclosures made by *The Economist* and *Amar Desh* in the Skype scandal.

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Justice in Bangladesh

Another kind of crime

Bangladesh's war-crimes tribunal is sullying its judicial and p

Mar 23rd 2013 | From the print edition

IN 1961 Israel kidnapped Adolf Eichmann from Argentina and put him on trial for crimes committed 20 years earlier. Eichmann had been secretary at the Nazis' Wannsee conference that led to the Holocaust. His trial in Jerusalem was a model of meticulous process. The

কোথায় দাঁড়িয়ে আমাদের সংবাদমাধ্যম?

নগর সংস্করণ

আমার দেশ

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চরমপত্র পাঠকারী কে এই ব্লগার ইমরান?

JUST SAY NO!

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Bangladesh War-Crime Tribunal Bogs Down

Government Under Fire for Alleged Interference in Process Intende Rifts

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By TOM WRIGHT

Bangladesh's government is facing mounting pressure from opposition pa human-rights groups over alleged political interference at a war-crimes trib intended to heal four-decade-old rifts.

Prime Minister Sheikh Hasina's government set up the International Crime two years ago to investigate human-rights abuses committed during a civi led to Bangladesh's independence in 1971.

Enlarge Image

Associated Press

Delwar Hossain Saweedi, center, an Islamist

The government promised th tribunal, which has the power down death sentences, woul international standards. But Bangladesh's opposition part the government has politicize process. Most of the 10 peop are members of Jamaat-e-Isl Islamist political party allied with the

Tribunal Leaks

Blog Archive

Tuesday, 18 December 2012

Tribunal Chairman wants to deliver quick judgment even if that results in a one sided trial.

Nasim tells Ziauddin that if the defence boycott the tribunal, it is better because tribunal then can pass the verdict sooner

source: www.tribunalleaks.be

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CHAPTER 4

CONSPIRACY TO COMMIT JUDICIAL MURDER*

Executive Summary

Until 11 December 2012, the International Crimes Tribunal-1 was composed of Justice Md. Nizamul Huq as Chairman, with Justice Md. Jahangir Hossain and Justice Anwarul Hoque as members. The International Crimes Tribunal-2, on the other hand, was composed of Justice A.T.M. Fazle Kabir as Chairman, with Justice Obaidul Hasan and Judge Md. Shahinur Islam as members. On 11 December, Justice Huq resigned when his clandestine Skype conversations with Ahmed Ziauddin, a Bangladeshi lawyer living in Brussels, were disclosed by the daily *Amar Desh*.[2] Following his

* The text in this chapter is reproduced from a December 2012 report which appears on the "Watch on Bangladesh War Crimes Tribunal" website (http://ictbdwatch.wordpress.com).

2 *Amar Desh* is a daily national newspaper. The contents of the Skype conversations and emails of the two men were also disclosed by *The Economist* in its 15 December 2012 edition and the *Wall Street Journal* on 20 December 2012. Subsequently, the entire audio recordings and emails were made available at http://www.tribunalleaks.be. *The Economist* in its report noted that it had no reason to believe that the recorded conversations or emails were "fake" or "tampered with". None of the participants to the Skype conversations or the 20-odd people referred to in the conversations have denied the authenticity of the contents.

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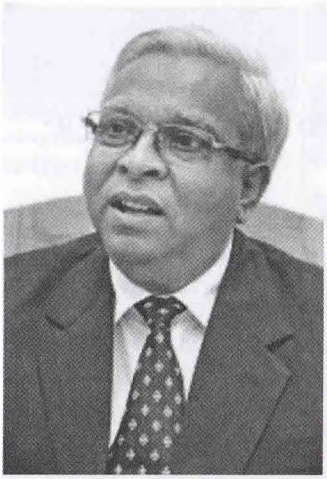
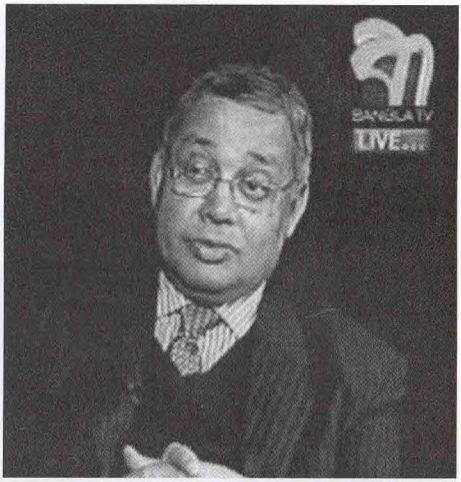


Justice Md. Nizamul Huq



Ahmed Ziauddin

resignation, the Tribunals were swiftly reconstituted. Justice Kabir was brought in from Tribunal-2 to serve as Chairman of Tribunal-1. Justice Hasan was promoted to the post of Chairman of Tribunal-2 and a new member was inducted into Tribunal-2. The disclosure of the Skype conversations which led to Justice Huq's resignation shows the level of impropriety and manipulation of the trials by the executive and even the judiciary itself. The following is revealed from the conversations:

- The conversations between Justice Huq and Ziauddin show that they had discussions not only as to who should depose as prosecution witness, but also as to the contents and length of the deposition.
- Emails between Ziauddin and Justice Huq show that the indictment orders of Prof. Ghulam Azam, Salahuddin Quader Chowdhury and Delwar Hossain Sayedee were in fact drafted by Ziauddin and emailed to Justice Huq the evening before they were announced in open court by Justice Huq.
- Email exchanges between Ziauddin and Justice Huq clearly show that the formal charge placed before the Tribunal in the

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case of Azam, which was purportedly prepared by the prosecution, was in fact prepared by Ziauddin. It is clear therefore that the order of cognizance taken by the Tribunal on the basis of the formal charge drafted by Ziauddin is illegal.

- Justice Huq had regular meetings with the prosecutors during which decisions were taken regarding filing of petitions by the prosecutors and passing of orders thereon by the Tribunal. Not only that, Ziauddin played an important role in advising Justice Huq and the prosecutors, often acting as a conduit between the two.
- The conversations between Justice Huq and Ziauddin also show extensive executive interference, in particular that of the State Minister[3] for Law, Justice and Parliamentary Affairs, with the process of the Tribunal. The State Minister regularly visited Justice Huq and directed him to pass judgments quickly.
- Furthermore, there is evidence to show that Justice Huq had been offered a promotion to the Appellate Division by the Chief Justice and a senior Judge of the Appellate Division upon disposal of as many as three cases by December 2012. In light of this disclosure it is feared that similar rewards/incentives were given to other judges of the Tribunal.
- The appointment of judges too is revealed to be made on a political basis. Judge Shahinur Islam (Tribunal-2) and Justice Jahangir (Tribunal-1) are described as Awami Leaguers. Justice Hoque (Tribunal-1) is described as a "yes-man" of Justice Huq. Justice Kabir (Chairman of Tribunal-2 and now of Tribunal-1 since 13 December) is described as taking into account political considerations in making statements/taking decisions.

Most of the judges of the Tribunals appear from the Skype conversations to be appointed because of their political leanings. There is evidence of interference by ministers. Ziauddin also seems to have influence over the judges in both Tribunals. Although the evidence of interference by ministers is available in respect of one judge (due to

3 A State Minister is a junior minister.

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the benefit of the Skype conversations), it is only reasonable to believe that the same ministers who influenced Justice Huq would also seek to influence other judges of the Tribunal. All the judges have been tainted. So the only course open is to hold a retrial with new judges in all cases. There should also be an independent inquiry into the conduct of all the judges of both the Tribunals.

Witness Selection and Training by Judges and Prosecutors

The conversations between Justice Huq and Ziauddin clearly show that they had discussions not only as to who should depose as prosecution witness, but also as to the contents of the deposition. They also indicate extensive witness tutoring being conducted at the instance of Ziauddin. Furthermore, there is clear evidence of the Tribunal, Ziauddin and prosecutor Zead Al Malum determining the contents of the deposition of the prosecution witnesses.

In a conversation on 10 September 2012, Ziauddin said that the deposition of Sultana Kamal,[4] a prosecution witness, should not be too long, otherwise she would be subjected to "too many questions" during cross-examination (http://www.tribunalleaks.be/index.php/component/k2/item/246-e-2012-09-10). Later on 15 September 2012, Ziauddin expressed his satisfaction with the deposition of Sultana Kamal, noting that she had realised which points to emphasise after a "good number of discussions" with her and after "supplying her all relevant information". The following conversation took place in this regard:

> Ziauddin: ... after giving [her] the information we had no need to brief Sultana Apa [i.e. Sultana Kamal] again. We just gave her some information and there was nothing further to tell her. We had a good number of discussions, she understood it well. She knew what to emphasise and what not to do.

4 Sultana Kamal is the Executive Director of Ain O Salish Kendro, an NGO. She has campaigned for the trial of leaders of Bangladesh Jamaat-e-Islami for war crimes.

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In a conversation on 13 September 2012, Justice Huq also stated that the deposition of Sultana Kamal was "high class" and that according to his assessment, no further witnesses were required in the case of Azam (apart from witnesses regarding the Siru Miah killing and a few seizure list witnesses) (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 04.30-04.50).

During the conversation of 15 September, Justice Huq stated that the incidents of 19 March 1971 in Joydebpur Park should be brought on record so as to facilitate the delivery of his judgment. Ziauddin however expressed his dissatisfaction with Major General (Retd) Shafiullah's capacity to depose as prosecution witness, stating that Shafiullah did not have a good memory and that he had the "attitude of a commander" and that both he and prosecutor Zead Al Malum were concerned that Shafiullah would portray the Pakistan Army as the "main protagonist" (instead of Jamaat-e-Islami, whose leaders were now on trial). Ziauddin also went on to say that Shafiullah was a "heavyweight witness" and that if his deposition was off the mark, it would create major problems. Justice Huq agreed with such analysis and said: "Yes. The concern is genuine." (reported in *Amar Desh*, 11 December 2012, p. 9) (http://www.tribunalleaks.be/index.php/component/k2/item/218-e-2012-09-15)

In the same conversation, Justice Huq himself proposed that Muntasir Mamun,[5] another prosecution witness, could be re-examined by the prosecution to bring on record the incidents of 19 March 1971. The following conversation took place:

> Justice Huq: Hmm. There is another way. Muntasir Mamun is deposing as an expert on the history [of 1971] so we could bring the event of 19 March on record through him in re-examination.

5 First prosecution witness. He is the Vice President of the Ekattorer Ghatak Dalal Nirmul Committee (Committee for Eliminating the Killers of 1971) and has been campaigning for the trial of leaders of Bangladesh Jamaat-e-Islami.

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> Ziauddin: Yes. That is why I suggested to Malum Bhai[6] to identify the areas which have not been covered. Since he [Muntasir Mamun] is an expert of history and has writings on almost everything and as such is an authoritative witness. The Tribunal easily can accept him as the authority in 1971. So whatever gaps remain can be covered by him [Muntasir Mamun] ...

Earlier, in their conversation on 2 September 2012, Ziauddin and Justice Huq discussed an eyewitness who would depose as prosecution witness against Salahuddin Quader Chowdhury (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – for relevant excerpts, see 1.40-1.58 and 04.05-05.35).

Charge Framing Orders Prepared by Ahmed Ziauddin

Email correspondence between Ziauddin and Justice Huq shows that the orders of the Tribunal framing charges against Azam, Chowdhury and Sayedee were in fact drafted by Ziauddin and emailed to Justice Huq the evening before they were announced in open court by the erstwhile Chairman of Tribunal-1. The order framing charges against an accused person, that is, the indictment, marks the commencement of the trial. Since the order of indictment, although formally passed by the Tribunal, is the work of Ziauddin, the proceedings pursuant to such indictment have been vitiated, necessitating a retrial.

In an email dated 27 September 2011 addressed to the then Tribunal Registrar, Ziauddin stated that they were conducting "further research" and that according to ICC and ICTY jurisprudence, the "crime of persecution" could be interpreted to include "destruction, looting of private properties as international crimes". By an email dated 2 October 2011 (http://www.tribunalleaks.be/index.php/justice-denied/tribunal-delivers-orders), Ziauddin sent Justice Huq a document titled "20111002-Caseno1ChargesJV.doc" containing

6 "Bhai" literally means "brother". It is a form of address used in the sub-continent to address older/senior friends/relatives.

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the charge framing order to be delivered in the case of Sayedee. In the text of the email, Ziauddin stated that "we are now suggesting to consider use of 'crime of persecution' on any of four grounds instead of 'inhuman acts' for arson, burning, looting". A comparison of the draft order sent by Ziauddin and the charge framing order delivered by the Tribunal clearly shows that Sayedee was charged for crimes against humanity according to Ziauddin's dictates.

In an email dated 10 February 2012, Ziauddin informed Justice Huq he "could not work on the SQC [Salahuddin Quader Chowdhury] charge". Ziauddin also said that he would appreciate it if Justice Huq could share the draft that he was working on "so that we can look at it and provide our inputs for your consideration". He also proposed to reschedule the hearings of the cases so that the cases of Azam and Motiur Rahman Nizami could be heard before that of Chowdhury. In the email, Ziauddin stated, "Since there is not much time in hand, I am thinking whether you should consider postponing it so as also to bring up Golam [Azam]. Also, for the same reason, Nizami's hearing could also be rescheduled accordingly."

By an email dated 12 May 2012, Ziauddin sent Justice Huq a document titled "Ghulam AzamChargesFinalDraft.doc". By comparing the draft order sent by Ziauddin with the order passed by the Tribunal dated 13 May 2012, it becomes clear that the Tribunal presided by Justice Huq framed charges against Azam as directed by Ziauddin. The order delivered by the Tribunal is exactly the same as that contained in the email attachment sent by Ziauddin.

By an email dated 27 May 2012, Ziauddin sent a document titled "ChargesAgainst MotiurRahmanNizami.doc", stating in the text of the email that the attached document "should be largely acceptable now". Ziauddin also expressed an intention to discuss with Justice Huq the contents of Charge Number 16 that he considered as genocide for the reasons set out therein. If one compares the draft order sent by Ziauddin and the order passed by the Tribunal, it is clear that the

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Tribunal framed charges against Nizami as directed by Ziauddin. It is undisputed that no arguments were made either by the prosecutor or by the defence counsel regarding the contents of Charge Number 16 during the course of the charge hearing. However, acting at the behest of Ziauddin, Justice Huq delivered the charge framing order containing Charge Number 16, although the same had no basis in the formal charge submitted by the prosecution.

Formal Charge Against Ghulam Azam Submitted by Ahmed Ziauddin

Between 10 and 19 December 2011, Ziauddin emailed Justice Huq as many as five drafts of the formal charge to be submitted by the prosecution as per section 9 of the International Crimes (Tribunals) Act, 1973. On 23 December 2011, Ziauddin sent an email (http://www.tribunalleaks.be/index.php/justice-denied/unparalleled-power) to Justice Huq containing a structure of a revised version of the formal charge to be submitted against Azam. The document attached to the email (http://www.tribunalleaks.be/index.php/justice-denied/unparalleled-power), which was prepared by the International Crimes Strategy Forum (ICSF),[7] set out in detail the strategy to be adopted and the path to be followed by the prosecution in order to establish the commission of crimes against humanity by Azam. In the document it was stated that "most importantly we have to establish a link, i.e. a chain of command between the top echelon of the Jamaat-e-Islami and Peace committee with these forces, i.e. Razakars etc". In the same document ICSF expressed a desire to have Jamaat-e-Islami established as an auxiliary force. On 5 January 2012, the prosecution submitted a formal charge against Azam adhering strictly to the structure and guidelines set out in the 23 December document.

7 ICSF has long been campaigning for the trial of leaders of Bangladesh Jamaat-e-Islami (http://www.icsforum.org).

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Collusion Between Tribunal and Prosecution

Justice Huq had regular meetings with the prosecutors during which decisions were taken regarding filing of petitions by the prosecutors and passing of orders thereon by the Tribunal. Not only that, Ziauddin played an important role in advising Justice Huq and the prosecutors, often acting as a conduit for the exchange of information between the two. These conversations clearly establish that the Tribunal had been acting in collusion with the prosecution to secure conviction of the accused persons. A fair trial can only be ensured by removing the prosecutors who were seeking to pervert the course of justice.

On 8 September 2012, Justice Huq informed Ziauddin that he told the chief prosecutor that no adjournments would be granted in the case of "No. 1" (i.e., Azam) (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 13.42-14.00). In fact, a large part of the conversation of 8 September shows how the Tribunal, the prosecution and Ziauddin were working together to determine the pace at which the trials should run and the prospect of Tribunal-1 delivering Azam's verdict before the others.

On 13 September, Justice Huq told Ziauddin that if he needed a copy of the day's proceedings, the prosecutor Malum could have simply called him (Justice Huq) and obtained a copy from him which could then have been scanned and sent to Ziauddin. Justice Huq explained that the normal process[8] of obtaining copies of the proceedings was time-consuming and, hence, suggested such an alternative. He expressed disappointment that the prosecutor did not call him to obtain a copy of the proceedings. This conversation clearly shows that Justice Huq was in constant communication with the prosecutor Malum and that he did not consider it improper for a prosecutor to speak to him over the phone (http://www.tribunalleaks.be/index.

8 The legal process for obtaining copies of proceedings is to make an application to the Registrar. Such application can only be made by a party to the proceedings.

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php/documentation/archive/audioarchive – relevant excerpts of the audio at 2.20-4.30).

In a conversation with Ziauddin on 5 October 2012 (a Friday, which is a weekly holiday in Bangladesh), Justice Huq said that he had summoned the prosecutors in the evening and informed them that the prosecution case against Azam had reached a stage where it could be closed after producing the investigating officer. Justice Huq also said that he had asked the prosecutors to file an appropriate application before the Tribunal so that he could restrict the number of defence witnesses (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 02.30-4.10). The next day (i.e., Saturday, also a weekly holiday), Justice Huq informed Ziauddin that the chief prosecutor and the prosecutor Malum had come to visit him in the morning and that he had directed them to file an appropriate application whereupon he would pass "proper orders". Justice Huq also stated that he wanted the application to be filed expeditiously by the prosecution (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 00.10-00.45).

In yet another conversation on 12 October 2012 (also a Friday), Justice Huq admitted to Ziauddin that the chief prosecutor and the prosecutor Malum had come to visit him in the morning and that they had arrived at a "common conclusion" (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 00.10-00.30).

Executive Interference with the Process of the Tribunal

The conversations between Justice Huq and Ziauddin show extensive executive interference with the process of the Tribunal. There is also evidence to show that Justice Huq had been offered promotion to the Appellate Division of the Supreme Court, the highest court in the country, upon disposal of as many as three cases by December 2012.

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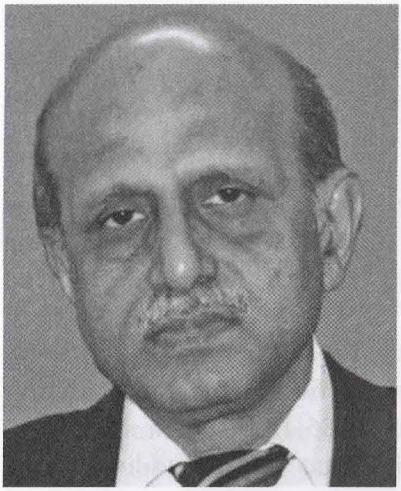

"Big Guy" Justice Md. Muzammel Hossain, Chief Justice of Bangladesh

According to Justice Huq, the Chief Justice, whom he referred to as the "Big Guy", told him if he gave a verdict in Azam's case, he would be promoted. But another Appellate Division judge had asked for three verdicts. In the conversation he clarified that the three cases were those of Sayedee, Azam and Chowdhury (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 57.00-58.59).

Justice Huq said the following to Ziauddin in his Skype conversation on 6 September 2012:

> Justice Huq: The Big Guy is waiting for that one [Azam's case].
>
> Justice Huq: He [the Chief Justice] says – "Give me one." Sinha Babu[9] says – "Give me three by December. This one [the Sayedee case], Ghulam Azam's and SAQA's [Salahuddin Quader Chowdhury]. If you can deliver judgments in these three then it's confirmed. Then we will bring you up here. You won't be needed there [at the Tribunal] anymore." I told him – "Do whatever you will but give me the promotion first."
>
> (Reported in *Amar Desh*, 9 December 2012)

In the ordinary course of events Justice Huq would never be promoted to the Appellate Division of the Supreme Court. He would have to supersede 50 judges in the seniority list to be appointed as a judge

9 Justice S.K. Sinha, a judge of the Appellate Division of the Supreme Court. He is the seniormost judge after the Chief Justice.

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of the Appellate Division. He was offered an otherwise unattainable promotion as a reward/incentive. It is difficult to believe that other judges in both Tribunals 1 and 2 were not given similar incentives. In fact it would only have been natural that they were.

On 5 October, Justice Huq told Ziauddin that he would speak to the Law Minister and convey to him his concerns regarding appointing Dr. Tureen Afroze[10] as a "researcher" for the Tribunal. Justice Huq told Ziauddin that he would tell the Law Minister, "Sir, you can appoint Tureen as Researcher for the Prosecution ..." (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 16.55-17.15). In a subsequent conversation on 8 October, Justice Huq told Ziauddin that he would try to meet the Law Minister the next Friday with regard to the appointment of a researcher for the Tribunal (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 08.30-08.50). The tenor of the conversation suggested that he met the Law Minister on a regular basis.

In a Skype conversation of 27 August 2012, Justice Huq told Ziauddin that Justice Jahangir of Tribunal-1 had been selected by the State Minister for Law. Ziauddin then asked how he could have been appointed, asking whether the Prime Minister knew about this. Justice Huq replied by saying that the Prime Minister did in fact know. This is the conversation:

> Justice Huq: He [Justice Jahangir] is not our choice. He is not even the Law Minister's choice. However, his name came up and then he was recommended by the Chief Justice. He is a lawyer from the lower

10 Dr. Tureen Afroze has been actively campaigning for the trial of Jamaat leaders. She regularly participates in meetings of the Ekattorer Ghatak Dalal Nirmul Committee (Committee for Eliminating the Killers of 1971), an organisation headed by Shahriar Kabir.

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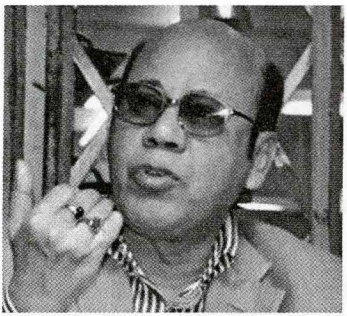
Shafique Ahmed, Law Minister



Qamrul Islam, State Minister for Law

courts. Quamrul, the State Minister for Law,[11] made him a Tribunal judge. He was a public prosecutor at the Smuggling Court. He has the nickname "Gold Dealer Jahangir".

(Reported in *Amar Desh*, 9 December 2012)

Later on the same day, the following conversation took place:

Justice Huq: I believe he has come on the "Quamrul Quota". He has been appointed on the "Quamrul Quota".

Ziauddin: How is this possible? Does not the Prime Minister know?

Justice Huq: She does but she really likes them [meaning Quamrul and his clique]...

(Reported in *Amar Desh*, 9 December 2012)

In the same conversation, Justice Huq described the newly appointed Justice Jahangir as corrupt. And then he clarified, "At least he was corrupt." He then said later on in the conversation that since Justice

11 Qamrul Islam, the State Minister for Law, was a Public Prosecutor at the lower courts himself during the last Awami League Government of 1996-2001. This is probably why the State Minister appointed Justice Jahangir.

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Jahangir was corrupt, he would not cause any problems[12] (*Amar Desh*, 9 December 2012).

When Ziauddin asked Justice Huq about Justice Jahangir's political background, he replied that he was an Awami Leaguer (*Amar Desh*, 9 December 2012). The following conversation took place:

Ziauddin: So what are his political leanings?

Justice Huq: Awami! Awami!

Ziauddin: My goodness. If there are too many Awami Leaguers, then?

Justice Huq: I believe that's exactly what they had in mind. Babu[13] is JSD [a socialist party] and Tagore[14] is CPB [Communist Party of Bangladesh]. So they thought they would appoint an Awami Leaguer.

Ziauddin: So divide and rule. Our Law Minister[15] could not do anything then.

12 This was presumably because Justice Huq thought that he would not have the moral authority to disagree with him.

13 Babu, whose full name is Md. Ruhul Quddus, was a candidate under consideration for appointment as judge of the Tribunal. He was described by Justice Huq as being a socialist/communist and hence desirable. Both Justice Huq and Ziauddin were communists/socialists in their student days so they preferred judges from socialist/communist backgrounds as opposed to judges of Awami League backgrounds. Although the present Government is a coalition of the Awami League and socialist/communist parties, the latter had a bitter relationship with the Awami League during the mid-1970s. This discussion reflected that past.

14 His full name is Gopal Chandra Tagore. He was also being considered for appointment as a judge of the Tribunal.

15 The Law Minister too had a communist background.

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On 1 September 2012, Justice Huq told Ziauddin that Justice Jahangir was a "political person" and had been "instructed" to say "OK" in court to whatever Justice Huq said, and that if he (Justice Jahangir) wanted to say anything, he should do so privately in Justice Huq's room (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 11.15-12.40).

The relevant portion of the Skype conversation of 1 September 2012 is as follows:

> Justice Huq: I know him from before. He's good. He is a political person

> Justice Huq: Let's see. He won't be bad [i.e., harmful]. He has been instructed to express his views inside the room [the judge's chamber]. In court he has been told to say "OK" to whatever the Chairman says.

In a conversation on 28 August 2012, Justice Huq informed Ziauddin that Justice Jahangir had been "instructed" to say "Yes" to whatever Justice Huq said (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 01.30-02.00).

Justice Huq also said that a former member of Tribunal-1, Justice Zaheer Ahmed, had been removed from the Tribunal at the behest of the Law Minister. Justice Huq stated that the Law Minister had summoned Justice Ahmed to his residence on the evening of 26 August 2012 and had asked him to resign, and further that the Law Minister had assured Justice Ahmed of a compensatory appointment in the Law Commission (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 03.30-04.25).

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In a subsequent conversation on 1 September, Justice Huq said that he had advised Ahmed to tell everyone that he had resigned on medical grounds (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 07.05-08.00). The 1 September Skype conversation of Justice Huq revealed the following about his instructions to Ahmed:

> Justice Huq: I told him [Ahmed] "You will not talk to anyone about anything. You will simply say you resigned for medical reasons. You will not say anything else." If he uses the language he used with me then we will have problems. He will also lose his job offer [at the Law Commission].

On 6 September 2012, Ziauddin expressed his satisfaction, in a conversation with Justice Huq, that Justice Kabir (the former Chairman of Tribunal-2 and now the newly appointed Chairman of Tribunal-1) would make statements/take decisions on political considerations (*Amar Desh*, 9 December 2012).

A conversation between Justice Huq and Ziauddin on 1 September 2012 clearly showed that the administrative functionaries of the Tribunal were political appointees. The two men discussed how the new Assistant Registrar, Shawkat, had been involved beforehand with ICSF and that he was considered as reliable by them (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 03.15-05.25). (Also see the email dated 30 August 2012 of Rayhan Rashid to Ziauddin, copied to Justice Huq, available at http://www.bdictunveiled.com/bdictunveiled/index.php/component/k2/item/258-emails1-53.)

On 8 September 2012, Justice Huq and Ziauddin agreed that the case of Azam should be disposed of first, given that there was a "political signal" regarding its disposal (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 28.42-29.00). On 14 October 2012, Justice Huq stated

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that the Government had gone "mad for a judgment" and that they were extremely keen to have a judgment delivered by 16 December 2012. (See also "Trying war crimes in Bangladesh", *The Economist*, 15 December 2012.[16])

Justice Huq informed Ziauddin that he could deliver a judgment only in Sayedee's case within December 2012, but not that of Azam, which would continue till January-February 2013. He also said that the Government would "cool down" only after a judgment had been delivered (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 10.45-11.43). This was also reported in *Amar Desh* (9 December 2012):

> Justice Huq: The Government is mad for a judgment. If it's Sayedee they want, I can deliver a judgment in December. The Government is mad. They want a judgment.

In a conversation on 15 October 2012, Justice Huq stated that the State Minister for Law had visited him and that he had asked him to deliver judgment in the case of Azam quickly. Justice Huq also stated that the State Minister had said that a meeting would be arranged of all the judges of the two Tribunals in order to ensure the delivery of the verdict in the case of Azam before any other case. Ziauddin also indicated that a similar message was sent by him to the Law Minister (http://www.tribunalleaks.be/index.php/documentation/archive/audioarchive – relevant excerpts of the audio at 00.20-01.15). This conversation was also reported in *Amar Desh* (9 December 2012):

> Justice Huq: Today he [State Minister for Law] came to see me in the evening ...

> Justice Huq: ... He says – "After I come back [from the Hajj] I will make the two Tribunals sit together with Sir [i.e., Law Minister] in one

16 Copies of this issue of *The Economist* were seized by the Bangladesh customs authorities when they arrived at the airport in Dhaka.

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room and discuss the matter. You [Tribunal-1] will deliver Ghulam Azam's judgment first, then they will deliver theirs."

Justice Huq and Ziauddin expressed their glee over the cabinet reshuffle. They were happy with the appointment of Dr. Mohiuddin Khan Alamgir as Home Minister in place of Sahara Khatun. They described Dr. Alamgir as an "informal ICT contact person". On 15 September Ziauddin and Justice Huq had the following conversation:

Ziauddin: Sahara Khatun[17] has been removed. This is good news. And the person who has replaced her has good access to a lot of people. And he was already the ICT's informal contact person. So this will be positive ...

(Reported in *Amar Desh*, 11 December 2012, p. 9)

They also expressed satisfaction over the appointment of Hasanul Hoque Inu as the new Information Minister:

Ziauddin: On the other hand Inu Bhai has been given an important responsibility – Ministry of Information.

Justice Huq: Yes.

Ziauddin: We have to get two things done by him. There is a policy document which was being prepared on information or the web, with which I'm worried – this needs to be dealt with. Plus the Information Ministry has been sparingly used by the ICT. And the Government has done nothing. The ICT is the responsibility of the Law Ministry but giving publicity is the work of the Information Ministry. These two tasks have to be done through Inu Bhai.

... I have shared my concerns with Inu Bhai with respect to the ICT. He is aware of my concerns. This is good. So I'm happy with

17 Former Home Minister. Currently Minister for Posts and Telecommunications.

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this appointment. Both appointments are good news. Both are key ministries ...

(Reported in *Amar Desh*, 11 December 2012, p. 9)

The Skype conversations show Ziauddin and Justice Huq took control over Tribunal-2 through the prosecutors and one of the judges. It was easy for Ziauddin to influence proceedings in Tribunal-1 directly through its Chairman, Justice Huq. However, Ziauddin initially had no access to the judges of Tribunal-2. The two seemed worried that Tribunal-2 was advancing really fast with three cases, those of Abdul Quader Mollah, Md. Kamaruzzaman and Abdul Alim.

The conversations show how Ziauddin and Justice Huq planned and prepared to take control over Tribunal-2. They both perceived that Tribunal-2 was trying to compete with Tribunal-1 to deliver the first verdict. They were of the impression that since Tribunal-1 was dealing with the prominent leaders of Jamaat – Azam, Nizami and Sayedee – they should be the first to give a verdict. According to Ziauddin, Justice Kabir and Judge Shahinur Islam of Tribunal-2 did not like Justice Huq. So they approached the other member, Justice Hasan, to influence the proceedings in Tribunal-2. Ziauddin also had meetings with the prosecutors of Tribunal-2 to slow things down. In fact they even enlisted the help of the executive so as to be the first in giving a verdict. Justice Huq told Ziauddin how the State Minister for Law offered to help:

Justice Huq: ... He [the State Minister for Law] says – "After I come back [from the Hajj] I will make the two Tribunals sit together with Sir [i.e., Law Minister] in one room and discuss the matter. You [Tribunal-1] will deliver Ghulam Azam's judgment first, then they will deliver theirs."

(Reported in *Amar Desh*, 9 December 2012)

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On 8 September 2012, Ziauddin told Justice Huq that he had spoken to the prosecutors of Tribunal-2 who were willing to cooperate so that the cases in Tribunal-2 fell behind and Tribunal-1 could deliver the first verdict in the Azam case. The following conversation took place between Ziauddin and Justice Huq:

Ziauddin: Day before yesterday I spoke to a few of them – those who are in the prosecution there [Tribunal-2]. Saiful[18] and others.

Justice Huq: Yes.

Ziauddin: I wanted to know their views. They too were perhaps thinking about the matter [i.e., about the order in which cases should be disposed] ... They [Tribunal-2] are moving ahead swiftly with three cases – Quader Mollah, Kamaruzzaman and Alim ...

Ziauddin: That day for the first time a number of prosecutors from this side [Tribunal-1] were present in the Skype meeting. Malum, Simon and Tarek [Saiful's informal name] were also there ... We agreed on two things considering all the legal aspects. Firstly, that the first verdict must be given by Tribunal-1. There can be no competition here ...

(Reported in *Amar Desh*, 9 December 2012)

Ziauddin also said later on:

Ziauddin: So now that the prosecutors will cooperate in Ghulam Azam's matter [i.e., they will make sure that the Ghulam Azam case is disposed first and the other cases in Tribunal-2 will be slowed down]

(Reported in *Amar Desh*, 9 December 2012)

18 A.K.M. Saiful Islam is the prosecutor in Md Kamaruzzaman's trial which is being conducted in Tribunal-2.

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Ziauddin continued:

> Ziauddin: There is a political signal as well ... There is no way that Tribunal-2 can give the first verdict ... If required we will engineer this outcome. And they [the prosecutors] will agree to this. Everyone agrees that this case [Ghulam Azam's case] will be very significant.
>
> (Reported in *Amar Desh*, 9 December 2012)

That the prosecutors of Tribunal-2 actually slowed down proceedings was apparent from Justice Huq's conversation with Ziauddin. On 14 October 2012, regarding A.K.M. Saiful Islam (informally called Tarek), one of the prosecutors of Tribunal-2, Justice Huq told Ziauddin:

> Justice Huq: ... Tarek looks after Kamaruzzaman's case. He has slowed down proceedings there.
>
> (Reported in *Amar Desh*, 9 December 2012)

So here is an example of how the prosecutors colluded with Ziauddin and Justice Huq to change the course of the Tribunal's proceedings. The prosecutors of Tribunal-2 conspired to slow down proceedings there so that Tribunal-1 could deliver the first verdict.

One of the judges of Tribunal-2, Judge Shahinur Islam, was described by Justice Huq as having an "Awami character". Ziauddin said that Judge Shahinur Islam had applied for a job at the ICC and sought his recommendation at the time. So when he met Ziauddin, he fell on his feet and touched them as a mark of respect.[19] Ziauddin described this as an Awami League trait. According to Ziauddin, he did this because he wanted the recommendation for the job. It is interesting to see that both Ziauddin and Justice Huq characterised Judge Shahinur Islam as an Awami Leaguer. The conversation of 16 October is as follows:

19 It is common in the sub-continent to show respect to elders by touching their feet.

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Ziauddin: Shahinur [Judge Shahinur Islam] suddenly fell on my feet and asked for my blessings.

Justice Huq: Huh

Ziauddin: He asked for my blessings. I was stunned.

Ziauddin: This is Sheikh Hasina's technique, I mean Chattra League's[20] technique ... As soon as they get an opportunity they will fall on your feet. This is how they build up their careers.

Justice Huq: That's the Awami character.

(Reported in *Amar Desh*, 13 December 2012)

Judge and Prosecution Acting in Collusion to Deceive the Public

Amar Desh disclosed on 10 December 2012 how Justice Huq and the prosecutor Zead Al Malum put on an act to show to the defence and the public that they (i.e., the Tribunal and prosecution) were not on good terms. Justice Huq told Ziauddin that he (Justice Huq) and Malum had agreed that Malum would stand up and make meaningless objections in court and Justice Huq would order him to sit down. All this would be done to show to the public that there was not a good relationship between the Tribunal and the prosecution. Justice Huq is heard to say the following to Ziauddin in a Skype conversation on 12 September 2012:

Justice Huq: No there was no reason. I told him off and asked him to sit down. Later, I called him back to my room. He then said – "You have done the right thing. I will stand up and you will order me to sit down. Let people see that you do not favour me."

20 Student wing of the Awami League.

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(Reported in *Amar Desh*, 10 December 2012)

Ziauddin approved of this deception, saying that this was Malum's strategy to raise public confidence in the Tribunal.

> Ziauddin: That is his strategy. It is appropriate from that aspect. People will see that the Prosecution is trying and failing. That will inspire confidence in the trial process.

(Reported in *Amar Desh*, 10 December 2012)

Judge Involved in Prosecution Strategy

The judge, the prosecution, particularly Malum, and Ziauddin were acting in collusion throughout the trial. Ziauddin said that the prosecution strategy should only be known to five people, i.e., 3-4 core prosecutors, Justice Huq and Ziauddin. Ziauddin told the Chairman:

> Ziauddin: Only 5 of us will know [the prosecution strategy] – 3 to 4 core prosecutors and the two of us.

(Reported in *Amar Desh*, 10 December 2012)

How Ziauddin and Justice Huq Exercised Control over Tribunal-2

It may be mentioned here that in Kamaruzzaman's case, which was specifically being dealt with by prosecutor Saiful Islam (Tarek), 13 prosecution witnesses were produced and examined from 15 July to 15 October 2012. However, from 16 October to 1 January 2013 the deposition of only one additional witness had been completed. Interestingly, the judges of Tribunal-2 have also facilitated this slowing down. Saiful Islam spent one and a half months in the United States after mid-October and Tribunal-2, rather uncharacteristically,

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adjourned Kamaruzzaman's case to facilitate the prosecutor's holiday. Compare this with the situation where defence lawyers who were absent on a hartal[21] day (4 December 2012) were asked to explain in writing why they did not appear before Tribunal-2 on that day.

The slowing down of proceedings would not have been possible without the collusion of the judge(s) of Tribunal-2. In this regard, Ziauddin and Justice Huq tried to establish contact with Justice Hasan, a member of Tribunal-2. In his Skype conversation dated 6 September 2012, Justice Huq said he had contacted Justice Hasan, who when approached by Justice Huq said: "Let me see and understand how things are going on" (*Amar Desh*, 9 December 2012).

According to Ziauddin, two of the judges of Tribunal-2 (Justice Kabir and Judge Shahinur Islam) did not like Justice Huq. That was why they had to establish contact with the other judge, Justice Hasan.

On 8 September 2012 the following conversation took place:

> Ziauddin: ... I don't know how you'll take this but those two – ATM Fazle Kabir and Shahinur Islam [judges of Tribunal-2] – don't like you.
>
> Justice Huq: Hah Hah.
>
> Ziauddin: ... These two – they are not gentlemen. Their main target is just that [i.e., to give a verdict first]. And that's what they have told the Law Minister. They even told the Law Minister: "assign to us Prof.

21 Hartal means a general strike. This is a day on which offices stay closed and people do not bring out their vehicles on the call of an opposition party. The judges of the Supreme Court have traditionally not sat on a hartal day. However, due to politicisation of the judiciary in recent times, this practice has been departed from. A few benches of the High Court Division (which are extremely loyal to the Government) now sit despite a hartal. On 4 December 2012, of the 50 or so benches of the High Court Division, only two sat. The Appellate Division sat for a token few minutes and then retired for the day.

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Ghulam Azam's case[22] – we will do it better ..."

(Reported in *Amar Desh*, 9 December 2012)

So on 16 October 2012 Ziauddin told Justice Huq that he had not been introduced to Justice Hasan. He complained about how Judge Shahinur Islam did not introduce Justice Hasan to him. Justice Huq then said he would introduce him to Justice Hasan at his own residence after Ziauddin came to Bangladesh on 22 October 2012.

Justice Huq:... We will meet at my residence.

(Reported in *Amar Desh*, 13 December 2012)

Then again when Ziauddin complained repeatedly about how he was not introduced, Justice Huq said: "God willing, this time it [the introduction with Justice Hasan] will happen" (*Amar Desh*, 13 December 2012).

Due to lack of availability of Skype conversations after 22 October 2012 (when Ziauddin came to Bangladesh) one does not know what happened at that meeting or if it took place at all. But looking at the proceedings in Tribunal-2, one would have to say they have slowed down dramatically. From mid-July up to mid-October an average of four witnesses were being examined each month. After mid-October not even one deposition was completed in a month.

Conclusion

The above was information from one set of Skype conversations and emails involving one judge of one Tribunal. This limited information

22 Prof. Ghulam Azam was the leader of the East Pakistan wing of Jamaat-e-Islami in 1971. Both the Tribunals would like to pass the verdict in this case as it will be seen as an important factor contributing towards the advancement of the careers of the judges involved. Such judges are likely to be promoted sooner. (See the Chief Justice's comments in this regard as quoted by Justice Huq above.)

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shows executive pressure on judges to deliver judgments and incentives of promotion if judgments are passed within a specified time. It shows how judges are involved in the tutoring of witnesses. It also shows the extent of Ziauddin's influence over both Tribunals.

Although strictly speaking it may be argued that the Skype conversations and emails show executive interference and giving of incentives in respect of one judge only, it is difficult to believe that, this one judge having been so influenced, other judges were allowed to act independently. It would only be a logical conclusion that executive interference practised on Justice Huq was practised on all others. If there is evidence that ministers gave directions to one judge and visited him, it is almost certain they visited the other judges too. One cannot be expected to police judges. The judges were expected to be independent and honest. But they have fallen short of such standards. Now both the Tribunals have to be replaced by "fresh judges". Further, the prosecutors involved in perverting the course of justice should also be removed.

One cannot be expected to provide "hacked" conversations and emails of all the judges. It is a miracle that these conversations have been made available in the first place. But the information made available so far is more than sufficient to indicate a serious miscarriage of justice by both the Tribunals. The Tribunals have lost their credibility. In such a situation, new Tribunals have to be constituted with new judges not tainted by Ziauddin, by Justice Huq and by the executive. Moreover, an independent inquiry should be initiated to look into the conduct of each of the judges of both the Tribunals. The earlier this is done, the better for justice and the judiciary in Bangladesh.

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Implications of the Skype conversations and emails

The Skype conversations and the emails between the then Chairman of the International Crimes Tribunal-1 Justice Nizamul Huq and the expatriate Bangladeshi lawyer from Belgium Dr Ahmed Ziauddin, whose authenticity has not been denied, reveal the collapse of the independence and impartiality of Bangladesh's judiciary, an important pillar on which a democratic society is anchored. In Bangladesh, not only the judiciary but also all other important state institutions and the national media have been captured by the executive, opening the door to widespread corruption and abuse of power in public administration.

The conversations show a conspiracy involving Ziauddin, top judges, senior court officials and prosecutors to convict the Jamaat leaders. The government was pressing for fast judgments and wanted one in Prof. Ghulam Azam's case first because it would have a significant political impact as he was the head of Jamaat during the civil war and a highly respected leader internationally.

When the government asks for a verdict it means conviction and a death sentence. Prime Minister Sheikh Hasina had warned: "...no one will be able to stop the trial of war criminals. They will be executed on this soil" (*The Daily Star*, 3 March 2013). On the demands of demonstrators that the Tribunal mete out death sentences to those who were on trial, she has been reported as saying in parliament that she "would talk to the judges to convince them to take the sentiments of the protesters into account in formulating their decision" (opendemocracy.net, 5 March 2013). It appears, then, that sentiments of protesters, not facts and law, are to govern the judgments of the Tribunals, an Awami League concept of justice.

To please the government, the Chief Justice Mohamed Muzammel Hossain wanted Justice Huq to give judgment in Azam's case first

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with a promise of promotion to the Appellate Division. The next most senior judge S.K. Sinha wanted Huq to give three judgments – Azam, Sayedee and Chowdhury, three senior Jamaat leaders – before he would be promoted. To carry out this judicial charade the State Minister had agreed to arrange a meeting of the two Tribunals with the Minister of Law Shafique Ahmed to ensure that Azam's judgment would be delivered first. This conspiracy was taking place, unknown to the public, while the trial of Sayedee was still continuing before Tribunal-1 chaired by Justice Huq and defence witnesses were testifying.

The Bangladesh Constitution provides that "the Chief Justice and the other judges shall be independent in the exercise of their judicial function". The United Nations Basic Principles on the Independence of the Judiciary advocate that the judiciary "shall decide matters before them impartially, on the basis of facts and in accordance with law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". The Bangladesh Code of Conduct for the Judges requires a judge to uphold the "integrity and independence of the judiciary" and not to "lend the prestige of the judicial office to advance the private interests of others..."

Chief Justice Hossain, Justice Sinha and Justice Huq have clearly violated the Constitution, the UN Basic Principles and their own code of conduct by submitting to the pressures of the Government. They have lent the prestige of their judicial office to serve the political interest of Hasina's Awami League party. They have compromised the independence, integrity and impartiality of the judiciary.

The involvement of the Chief Justice in the conspiracy has rendered any appeal to the Appellate Division useless since he, as Chairman, together with Sinha would be in the panel hearing the appeal. No disciplinary action can possibly be taken against them because the Chief Justice and Justice Sinha are two of the three members in the Supreme Judicial Council set up under the Constitution to deal with misconduct

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of judges. They are not going to investigate their own misconduct and that of Justice Huq. Hence, the judiciary is so compromised that, to save its independence and integrity, it has to be reorganised with the appointment of a new Chief Justice and other judges untainted by the conspiracy. There has to be a retrial of the war crimes cases before an independent tribunal applying international standards in its adjudication. The prosecutors and investigating officers must be persons of integrity and free from political party influence.

The conspiracy to take the lives of the 11 opposition leaders using the judicial process, but not according to law, would amount to judicial murder if the accused are executed pursuant to verdicts passed by the two Tribunals. The term "judicial murder" was first used in 1782 by the German historian August Ludwig von Schlozer in reference to the execution of Anna Goldi. He explained the term as "the murder of an innocent, deliberately, and with all the pomp of holy Justice, perpetrated by people installed to prevent murder, or, if a murder has occurred, to see to it that it is punished appropriately". Interestingly, in 2008, the Swiss parliament exonerated Goldi on the ground that she had been subjected to an illegal trial.

There is ample evidence, in the Skype conversations and emails and the way the Tribunal-1 judges conducted Sayedee's case, of a deliberate attempt to manipulate the trial to convict and sentence him to death. Unknown to the public, Ziauddin was directing the Tribunal and the prosecutors on the conduct of the trial, choice of witnesses and the evidence they were to testify, and discussed strategy on handling the case with Justice Huq and the prosecutors. He was preparing documents including charge sheets, applications and judgment. Even before the defence had completed its case, he sent a draft judgment with the heading in capitals "CONVICTION/BASIS" and "SENTENCING". He also communicated with Government ministers on the proceedings of the case.

It must also be remembered that Ziauddin is not an expert on war

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crimes proceedings but one who, for years, has been involved in a witch-hunt of Jamaat leaders to try them on war crimes charges. The conspirators, all highly qualified lawyers, must have known that what they were doing was illegal. The Law Minister Shafique Ahmed has an LLM from King's College, London, and is a member of Lincoln's Inn and a former president of the Bangladesh Supreme Court Bar Association. With such a distinguished career in law, he must have understood the implications of his interference in the proceedings of the Tribunals.

Shafique was the coordinator, and Justice Huq the secretary, of the unofficial People's Enquiry Commission which, in its report, had concluded that Sayedee and several others were "killers, collaborators and war criminals" and that the government must bring them to trial since "only the government has the power to ensure the trial of any crime". This eminent lawyer did not deem it necessary to interview and incorporate in the report the responses of Sayedee and the others to the alleged charges in order to comply with the rules of natural justice. Upon becoming Minister of Law after the 2008 elections, he set in motion the war crimes trials which, based on the Skype conversations and emails, were intended to give legal sanction to the report's finding of guilt. A commission of inquiry is needed to look into the ways the Tribunals have been manipulated, identify those responsible and make recommendations for holding them accountable.

The war crimes trials, instead of doing justice and healing the wounds of the 1971 civil war, have produced deep divisions within Bangladeshi society. Awami League members and supporters defend the Tribunal proceedings while those from the BNP and Islamic parties and Islamic organisations demand a fair trial for the accused by an independent tribunal. After Sayedee was sentenced to death, violent demonstrations erupted, leading to over 200 demonstrators being killed and thousands wounded largely by the police using live ammunition.

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The Government has also aggravated the situation by initially coming out in support of bloggers who insulted Islam and Prophet Muhammad. It provoked an angry response from the scholars and students of Islamic schools who organised a massive demonstration in Dhaka of nearly a million people from different parts of the country demanding stricter punishment for the bloggers. The government is at a loss on how to deal with the situation, which is becoming more dangerous with the possibility of another civil war and military intervention.

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Annexes

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Annex 1

Open letter to the United Nations High Commissioner for Human Rights Navi Pillay

by The Lord Avebury and The Lord Carlile of Berriew QC CBE, 7 June 2013

Dear High Commissioner,

We write in relation to a particularly urgent human rights situation in Bangladesh as members of the All-Party Parliamentary Human Rights Group in the UK Parliament.

Proceedings before the ICT have troubled the international community for some time. You will be aware of critical statements by the Special Procedures, as well as the reports by a number of independent international NGOs. As the time for the first decision on appeal on conviction and sentence of death approaches, it seems vital that you should request the Bangladesh authorities for an invitation to visit by a joint delegation to visit Bangladesh as a matter of urgency with the objectives of assessing the procedures of the Tribunal and seeking access to those concerned, including the defendants in their place of incarceration.

We fully support the prosecution of the most serious crimes of international concern and the ending of impunity, but it is the duty of the State to ensure that in any judicial process established for this purpose, international criminal justice is enforced in a way that is not only complementary to national criminal jurisdictions, but also

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respectful of international human rights standards and international standards of procedure, fairness and transparency. Any lesser standard would negate the overall goal of securing the peace, security and wellbeing of a nation. It would fail in its central purpose of bringing a sense of justice to the numerous victims of conflict.

As early as 2012, the legislative framework of the Tribunal, namely its Statute the International Crimes Tribunal Act 1973 (ICTA) and the Rules of Procedure, were criticised for falling well short of recognised international standards. Although amendments were made to include the most basic rights for an accused person, i.e. the presumption of innocence and the independence of the judiciary, they were insufficient and provided only theoretical protection which remains illusory in practice. Throughout the proceedings, which began in 2011, the government of Bangladesh and the ICT have been subject to widespread and detailed criticism for their failure to secure the rights of the accused.

We note that a number of communications and urgent appeals have been submitted to following Special Procedures:

a. Working Group on Arbitrary Detention (WGAD);
b. Working Group on Enforced or Involuntary Disappearances (WGEID);
c. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions;
d. Special Rapporteur on the Independence of Judges and Lawyers; and
e. Special Rapporteur on Torture.

In response, the WGAD issued Opinion No. 66/2011 (Bangladesh) and Opinion No. 66/2012 (Bangladesh), in which it held that the cases fall in Category III of the categories applied by the Working Group. It called on the government to adhere to the standards and principles set out in the UDHR [Universal Declaration of Human Rights] and

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ICCPR [International Covenant on Civil and Political Rights] and to re-consider the applications for bail by the accused. In Opinion No. 66/2012 the WGAD referred to the matters contained therein as of such gravity as to warrant communication to the Special Rapporteur on Torture; a decision in that regard remains pending.

On 7 February 2013, Christof Heyns, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and Gabriela Knaul, the Special Rapporteur on the Independence of Judges and Lawyers, issued a statement finding that the trial conducted in absentia against Mr Abdul Kalam Azad did not provide for all the guarantees of a fair trial and due process.[1] Mr Heyns stressed:

> "Capital punishment may be imposed only following proceedings that give all possible safeguards to ensure a fair trial and due process, at least equal to those stipulated in the ICCPR, to which Bangladesh is a State party."

Gabriela Knaul stated:

> "I am concerned by questions that have been raised about the impartiality of judges and prosecution services of the Tribunal, as well as their independence from the executive. Witnesses and lawyers for the defence have also complained about an atmosphere of hostility, intimidation and harassment. Due process requires at a minimum that defendants are able to speak freely with their counsel, have adequate time to conduct their defence, and the ability to call witnesses to speak on their behalf. The principle of equality of arms should be respected at all stages of the proceedings."

A further statement was issued in April 2013.

1 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNewsaspx?NewsID=12972&LangID=E

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We note that calls for the respect of the provisions of the ICCPR have been made by a number of government and non-government representatives other than ourselves and the UK Government. These have been largely ignored, and further abuses of process have been allowed to pass unchecked. By way of example, judges have been removed and replaced by the Government in the midst of a trial without providing any time or facilities for the new judge to familiarise himself with the evidence already heard. In addition, the integrity and independence of the judges have been seriously undermined by revelations in the international media in December last year of serious judicial misconduct bordering on a criminal conspiracy to pervert the course of justice. These allegations have not been refuted, and they compromise the fairness of the proceedings before the ICT.[2]

We regret that the Tribunal and law enforcement agencies have failed to investigate and sanction repeated incidents of witness intimidation and, in one well-documented case, abduction. On November 5, 2012, the witness Sukhranjan Bali was abducted from the Tribunal precincts, allegedly by law enforcement officers. After months of unanswered questions, Mr Bali was found in a Kolkata jail. In a statement given whilst in detention in India, Bali has confirmed that he was "abducted from the court premises in a police van and was taken to an office in Dhaka" which he stated belonged to the Detective Branch of the Bangladesh Police. This incident highlights the need to conduct an independent and impartial inquiry at the international level as it has a serious impact on the integrity of the proceedings.

Mr Bali is a Hindu. It is not in dispute that he lost at least one family member during the 1971 War of Liberation. He has no association with the Government, Jamaat-e-Islami or any other political party. He has clearly been subjected to the most horrific treatment by both the Bangladesh and Indian authorities.

2 See the article by *The Economist*, 15 December 2012: http://www.economist.com/news/briefing/21568349-weekchairman-bangladeshs-international-crimes-tribunal-resigned-we-explain?zid=306&ah=1b164dbd43b0cb27ba0d4c3b12a5e227

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A recent incident in Dhaka further reinforces the need for the Special Procedures mandate holders to conduct an immediate inquiry. On May 26, 2013, Mr Munshi Ahsan Kabir, Defence Counsel for the accused Mr Ali Ahsan Muhammad Mujahid was physically assaulted by a Prosecution Witness, namely Mr Jalal Uddin in Dhaka city. An attempt to file a complaint with the police was refused on the basis that the Commanding Officer was unavailable and the duty officer was unable to accept the complaint in his absence. There has been no action taken despite the lawyer in question suffering injury.

Recently, a planned trip by a delegation of lawyers from the House of Lords to visit the Tribunal and to have open access to everyone concerned including the defendants was indefinitely postponed due to the recent violence on the streets and the concern that the government of Bangladesh may exploit the presence of the delegates as a means of legitimising the decisions taken by the ICT, as was evidenced during the recent visit by Ambassador Rapp.

In the light of the reports by the Special Procedures and the criticisms by NGOs, the onus is now on the Human Rights Commission to assess and evaluate the proceedings before the ICT, and if the Bangladesh government fails to issue the invitation as suggested, to conduct a desk study that will bring the failures to observe judicial and procedural norms to the attention of the international community. We reiterate that with the looming threat of the death penalty being carried out imminently as the defendants lose their appeals, your immediate action is needed.

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Annex 2

Justice for the past requires fair trials, warn UN experts

United Nations Human Rights press release,
7 February 2013

Two United Nations human rights experts expressed concern on 7 February 2013 about the death sentence passed by the International Crimes Tribunal in Bangladesh against Mr. Abdul Kalam Azad, following a trial conducted in absentia that did not provide for all the guarantees of a fair trial and due process. In a second verdict issued on 5 February, the Tribunal sentenced Mr. Abdul Quader Mollah to life imprisonment. Judicial proceedings are underway in several other cases and there is a risk that the defendants could also be sentenced to death.

"Given the historic importance of these trials and the possible application of the death penalty, it is vitally important that all defendants before the Tribunal receive a fair trial," said the two UN Special Rapporteurs.

Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, expressed alarm at the fair trial and due process concerns raised during proceedings that led to the imposition of the death penalty against Mr. Azad, including that the trial was conducted in absentia. "International law requires compliance with the most stringent fair trial and due process guarantees in cases where death sentences are imposed," he stressed.

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"Capital punishment may be imposed only following proceedings that give all possible safeguards to ensure a fair trial and due process, at least equal to those stipulated in the International Covenant on Civil and Political Rights, to which Bangladesh is a State party," he added.

"I am concerned by questions that have been raised about the impartiality of judges and prosecution services of the Tribunal, as well as their independence from the executive," said Gabriela Knaul, the UN Special Rapporteur on the independence of judges and lawyers. "Witnesses and lawyers for the defence have also complained about an atmosphere of hostility, intimidation and harassment," she added.

"Due process requires at a minimum that defendants are able to speak freely with their counsel, have adequate time to conduct their defence, and the ability to call witnesses to speak on their behalf," Ms. Knaul said. "The principle of equality of arms should be respected at all stages of the proceedings."

The Bangladesh International Crimes Tribunal established by the Government of Bangladesh in March 2010 is in fact a domestic court with the jurisdiction and competence to try and punish any person accused of committing atrocities, including genocide, war crimes and crimes against humanity, in Bangladesh, including during the country's 1971 independence war.

The experts stressed that any shortcomings in the trial proceedings should be carefully examined during any appeal. "A credible appeal process also constitutes an imperative component of fair trial guarantees, particularly in instances where the death penalty has been imposed," they noted.

"The Tribunal is an important platform to address serious crimes from the past, which makes it all the more important that it respects the basic elements of fair trial and due process," concluded the experts.

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Annex 3

UPR Working Group should make the review process useful for victims of rights abuse

Joint Statement by the Asian Legal Resource Centre and Odhikar, 25 April 2013

In the lead-up to the UN Universal Periodic Review, Bangladesh finds itself offering its citizens an environment amongst the most inimical to human rights since the nation's inception. At the UN Human Rights Council's UPR process on 29 April 2013, during the 16th Session of the UPR Working Group in Geneva, Bangladesh's human rights record will be up for review.

Human rights conditions in Bangladesh have deteriorated rapidly since the Asian Legal Resource Centre (ALRC) and Odhikar, a Bangladesh-based human rights organisation, jointly submitted their report to the UPR process in October 2012.

In order to respond to the ongoing situation, at least six independent human rights experts of the UN Human Rights Procedures have expressed serious concern in a joint statement issued on 29 March 2013. Their joint statement has called on all parties in Bangladesh "to cease violence immediately and return to peaceful demonstrations", after worrying levels of violence have been reported following large-scale protests across the country since 5 February 2013. The statement details how violent clashes between security forces and various groups as well as between the groups have so far claimed the lives of at least 88 persons and led to the injury of hundreds of other people. There have also been worrying reports on attacks against members of

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the Hindu community, their homes and places of worship, as well as against journalists and other media practitioners.

Bangladesh's undemocratic political culture, which always prefers to maintain a deeply flawed and dysfunctional criminal justice system, has largely shaped the present predicament. Citizens have been victims of the ongoing violence-stricken politics of arrogance and vengeance between conflicting parties, as well as within their top leaderships. No matter which party occupies office, their power-rabid nature and unabashed greed have goaded ruling politicians and their allies to amass substantial unaccountable wealth through corruption, acquire impunity for any crime, and enforce silence on criticism.

A flawed and rotten criminal justice system, along with coercive and lethal police and paramilitary forces, continuously contribute to the disastrous human rights realities in the country. Law enforcement agencies and security forces, who suffer an acute lack of professional efficiency and credibility in their day-to-day work, rely solely on the use of torture, inhuman and degrading treatment, and extrajudicial methods in the name of maintaining law and order. The government routinely abuses forces, police and paramilitary, by employing them as hired gunmen against any threat or political opposition. Authorities have tended to an entrenched culture of impunity, in order to benefit state-backed perpetrators of all forms of human rights abuses.

According to Odhikar's documentation, at least 665 persons have been extrajudicially murdered by law enforcement agents between July 2009 and 20 April 2013. Not a single perpetrator has been brought to justice before the courts of Bangladesh. The authorities, instead, have awarded many of the perpetrators of extrajudicial murder with gallantry awards and lucrative promotions and postings throughout this period. Enforced disappearances too have been rising in Bangladesh during this period; cases where the relatives have accused state agents of abducting and disappearing their family members, have risen to 78. Registering any complaint accusing the state agents is, however,

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impossible due to constant denials and stonewalling by the agencies and the criminal justice system.

The ordinary citizens' rights to liberty, life and protection from torture, and the guarantee of a right to fair trial, do not exist in Bangladesh today. Minority communities have been under attack on numerous occasions, while their houses, places of worship and business centres have been burned, demolished and looted by non-state actors. Freedom of assembly and association for opposition has been actively denied by state authorities, while supporters and allies of government have received not just encouragement, but direct support and state protection for enjoying the same.

Small-scale criticism against the government regarding corruption and other forms of crimes is tolerated. Such tolerance is token, to show that the media enjoys freedom. Dissident voices face tremendous threat, harassment, fabricated charges and deprivation of personal liberty for criticising the authorities. The judiciary, in routine, sits leaning toward the government, even more so in recent years due to complete politicisation of the institution by ruling political parties.

The UN Human Rights procedures should be aware that the Bangladeshi authorities have expertise in both making rhetorical speeches and suppressing the rights of the people, simultaneously. The UN should make its human rights monitoring systems effective so that victims can avail protection and justice from their country's institutions, which, it must be noted, do not comply with international human rights norms and standards. The authorities of Bangladesh must be held accountable for their pledges made in the first cycle of the UPR process in 2009. A mere ritualistic review will not help improve the human rights environment in Bangladesh, as far as guarantees of fundamental rights, right to fair trial, protection from torture and protection from deprivation of life through extrajudicial methods are concerned.

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The ALRC and Odhikar urge the UPR Working Group and the international community to make the Universal Periodic Review process effective to the extent that the original victims get justice rather than mere official formality of the UN human rights mechanism. The UPR Working Group should hold Bangladesh accountable for not allowing key civil and political rights-based mandates to visit Bangladesh in the last four years, despite repetitive pledges.

The ALRC and Odhikar call upon the Working Group of the Universal Periodic Review and the Human Rights Council to ensure that the Bangladeshi authorities:

i) Reform its dysfunctional criminal justice institutions, enabling them to function independently;
ii) Ensure independence of judiciary and the functioning of basic systems like complaint mechanisms, criminal investigation and the prosecutorial system;
iii) Criminalise torture by adopting the Torture and Custodial Death (Prohibition) Bill-2011 immediately;
iv) Put a halt to all extrajudicial executions;
v) Establish an independent commission to investigate all allegations of enforced disappearance, extrajudicial killings, torture and other grave abuses; and ensure that the perpetrators are brought to justice;
vi) End the use of torture and ill-treatment as tools of the policing system, and bring perpetrators to justice in accordance with international standards for fair trial;
vii) Take legislative, administrative and judicial measures to administer justice to the victims of violence and discrimination against women;
viii) Protect the rights of ethnic and religious minorities;
ix) Develop a comprehensive protection mechanism to protect the rights of the workers in compliance with international standards;
x) Ensure adequate compensation to victims of gross human

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rights abuses, without obstruction;

xi) Repeal all repressive laws, and refrain from enacting the proposed repressive NGO Affairs Bureau Bill to regulate NGOs;

xii) Fulfil its voluntary pledges and obligations under international human rights mechanisms and instruments;

xiii) Accede to the International Convention for the Protection of All Persons from Enforced Disappearances;

xiv) Ratify the Optional Protocol to the Convention against Torture and remove its reservation under the Convention Against Torture.

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Annex 4

Genocide in Bangladesh

by Ajmal Masroor
Bangladesh Independent News Network, 6 May 2013

I have heard of brutality and despotism in various parts of the world but Hasina, the current Prime Minister of Bangladesh, has broken all records. Hasina and her government have committed colossal genocide on Bangladeshi people yesterday. They have massacred countless men in the depth of the night.

Hefazote Islam and its supporters gathered in Dhaka city with the aim of putting extra pressure on the government to end its brutality,

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human rights abuse, political abduction, extrajudicial execution, aiding and abetting the Shahbag secular fundamentalists and thug rule. In response the government gave an ultimatum to the protestors to leave the city by dusk or the government will resort to its tried and tested method of clearing the city.

I have heard of evil dictators attacking their own people but Hasina, an elected parliamentarian and the Prime Minister of one of the most populous Muslim nations in the world, has stooped so low that even the evil dictators appear angelic. She massacred her own people while they slept. The protestors gathered in a square as the night fell and began to rest. Some slept, some engaged in chit-chat and some in personal prayers. At around 2.30am, while the protestors were resting and in the depth of the darkness that deepened over the city due to the government turning off the electricity from the entire area, the

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security forces moved in. What followed was a cold-blooded massacre of the protestors. In the darkness all that could be heard were tanks rolling, machine guns firing and people's last harrowing cries as the bullets pierced their bodies, leaving them dead or injured.

I have heard of Slobodan Milosevic's mass murder and mass graves in Bosnia but Hasina has gone one step further. Her security forces have simply vanished the bodies of those they have massacred. No one knows how many people have been shot dead by the security services and nobody knows how many people have been injured either. The media organisations that are trusted by the masses of people have been shut down, the remaining media have been given clear instructions to not report or show dead or injured bodies. There has been a total shutdown of press freedom and the world does not have a clue as to what unfolded in Dhaka last night. This was by the far the worst ever massacre of Bangladeshi people by any elected government.

I hold Hasina and her government directly responsible for this genocide. I call upon every human being in all parts of the world to

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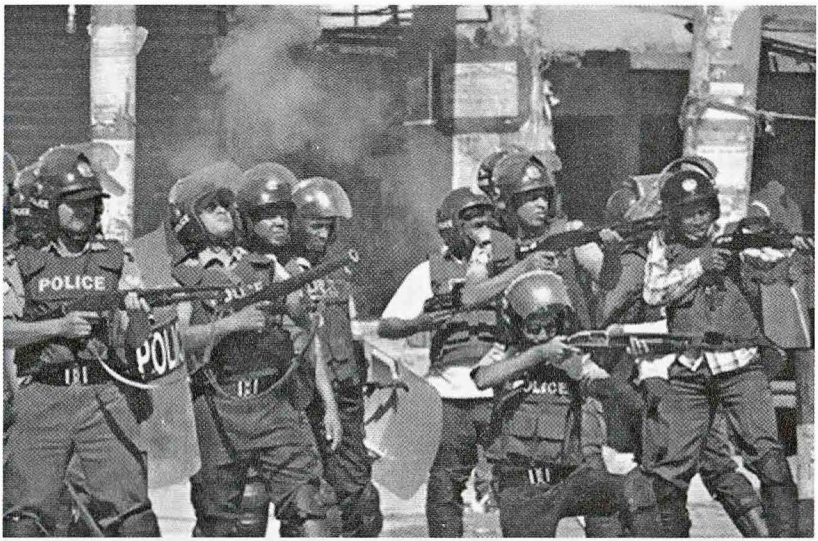

protest and raise their grave concerns at their local level and their local governments. I call upon our government in Britain to take immediate action against the Bangladeshi government. I call upon all Bangladeshis to boycott all those who support the current government and I call upon the international community to bring to justice the criminal and murderous Hasina and her government urgently.

The current Awami League-led government of Bangladesh is completely responsible for a premeditated and calculated slaughter of hundreds of Bangladeshi people. This government has orchestrated mass murder in the last 18 months on a scale that has not been witnessed in Bangladesh since the murders of thousands of Bangladeshis during the 1971 war. Hasina and her thugs have overtaken the brutality of the Pakistani army; they have unashamedly silenced their opposition by taking their lives.

I have always believed that dictators and despots will eventually be brought to justice, either in this world or in the hereafter. They will be brought to justice one day. Hasina and her cronies will find no holes big enough to hide in when their tenure ends. They will find

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no country safe enough to hide in when this parliamentary session expires. They will find no friends strong enough to defend them when the Bangladeshi people try them for crimes against humanity and genocide of Bangladeshi people.

Let me make myself clear – Hasina and the Awami League government are the true criminals and they should be tried in The Hague for mass murder.

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The Awami League (AL) of Bangladesh Prime Minister Sheikh Hasina won a landslide victory in the 2008 elections. Its election manifesto gave a pledge to the voters to uphold the independence of the judiciary and to strengthen the protection of human rights. In gross violation of its electoral pledge, it captured and turned the judiciary into a tool for advancing its political interests and launched a witch hunt of its political opponents.

One of the first acts of Hasina and her government was to establish the International Crimes Tribunal (ICT) to try alleged war criminals, which her party had promised to do in its manifesto. The ICT and the laws underpinning it came under severe criticism from international human rights organisations, United Nations bodies and eminent legal scholars for failing to comply with international standards to ensure a fair trial by an independent tribunal. Judges were appointed to the ICT based on their loyalty to the AL government and the judicial process was weighted against the accused, all from the opposition parties.

There was a conspiracy to convict and sentence to death the senior leaders of the Islamic political party Jamaat-e-Islami. The former chairman of the ICT Justice Nizamul Huq, senior members of the judiciary, the prosecutors, an expatriate Bangladesh lawyer Dr Ahmed Ziauddin and senior government ministers were involved in the attempt to subvert the course of justice and commit judicial murder.

The conspiracy was exposed when the British weekly *The Economist* and the Bangladesh daily *Amar Desh* published the Skype conversations and the emails between Huq and Ziauddin discussing the strategy to control the judicial process and to time the giving of guilty verdicts in order to have maximum political impact.

The collapse of the independence and impartiality of the judiciary has led to the repression of opposition political parties, workers and social organisations; torture and murder of victims in police custody; unjustified refusal of bail; and extrajudicial killings. With Hasina in power, Bangladesh is heading towards becoming a failed state where the rule of law has ceased to exist.

Citizens International is publishing this book in the hope that it will contribute to restoring democracy, human rights and the rule of law in Bangladesh.

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