



OHCHR REGISTRY

15 MAY 2012

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No: BMG/CHR-306/131

SPD
(encl.)

The Permanent Mission of the People's Republic of Bangladesh to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and with reference to the latter's communication No. UA G/SO 218/2 Health (2002-7) G/SO 214 (3-3-16) G/SO 214 (53-24) BGD 2/2011 dated 21 February 2011 addressed by the (1) Chair-Rapporteur of the Working Group on Arbitrary Detention; (2) Special Rapporteur on the independence of judges and lawyers; (3) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and (4) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning alleged ill-treatment/torture by the police/security forces following the arrest/detention of Mr. Salauddin Quader Chowdhury.

The Permanent Mission of Bangladesh has further honour to enclose herewith a copy of the responses of the Government of Bangladesh concerning the case mentioned above. The attached report has provided a detailed examination of the case for kind consideration.

The Permanent Mission of the People's Republic of Bangladesh to the United Nations Offices and other International Organizations in Geneva expresses the hope that taking into account the circumstances in the country and considering the detailed information provided, the case would be dismissed.

The Permanent Mission of the People's Republic of Bangladesh avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 14 May 2012

Encl: As stated
(Total pages: 1+ 18)

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(Attn: Ms. Jane CONNORS),
Chief, Special Procedures Branch)
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Copy to :

- (1) Mr. El Hadji Malick Sow, Chair-Rapporteur of the Working Group on Arbitrary Detention
- (2) Mr. Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers
- (3) Mr. Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and
- (4) Mr. Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

**Response from Government of Bangladesh on Communication
No. UA G/SO 218/2 Health (2002-7) G/SO 214 (3-3-16) G/SO 214
(53-24) BGD 2/2011.**

The International Crimes (Tribunals) Act, 1973 (ICT Act 1973) of Bangladesh was enacted by the Bangladesh Parliament which is vested with the legislative powers of the Republic under the Constitution. The ICT Act provides for the detention, prosecution and punishment of persons for genocide, crimes against humanity and other crimes under international law and for matters connected therewith. Thus, the ICT Act provides for the detention, prosecution and punishment of persons liable for such crimes committed during the War of Liberation of Bangladesh from 25 March to 16 December 1971. The violations involved the indiscriminate killing of civilians, including women and children; the attempt to exterminate or drive out of the country a large part of population of approximately 10 million people; the dislocation of, at any one stage or another, of nearly half of the country's population of 75 million people; the arrest, torture and killing without trial of suspects; the raping of women; the destruction of villages and towns; and the looting of property.

In addition to criminal offences under domestic law, there is a strong prima facie case that criminal offences were committed under international law, namely war crimes and crimes against humanity and acts of genocide. Under the Genocide Convention 1948, Article VI of the 1948 Genocide Convention provides that persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed.

In the Constitution of Bangladesh the right to protection has been embodied as a fundamental right and the government of Bangladesh has strong commitment to comply with that. As a result, whoever the citizen is, whether a criminal or not he has been entitled to have his right protected by the government of Bangladesh. Alleged perpetrators of war crimes before the War Crimes Tribunal are no exception as well. Constitution has clear indication about these rights of a person under detention. Article 31 states that,

“To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”

Also Article 35 states that,

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a

penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law.

(4) No person accused of any offence shall be compelled to be a witness against himself.

(5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

(6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.

So both the articles ensured the right to self protection as a fundamental right and as it is proclaimed in the constitution any law infringing these rights shall be deemed null and void.

However, the constitution itself differentiates the crimes against humanity or war crimes and the constitution does not provide these fundamental rights for the alleged perpetrators of war crimes under any competent tribunal. Article 47(3) states that,

“Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or any individual, group of individuals or organisation or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to, any of the provisions of this Constitution.”

In this regard it is clear and identical that the Tribunal has been created to prosecute criminals of specific nature who will not be entitled to the general protection under the constitution. The accused perpetrators before the Tribunal are not suspects of ordinary crimes. They are alleged to have committed crimes against humanity, committed in violation of customary international law. For this reason the tribunal has specific mandate to prosecute the alleged persons and thus the International Crimes Tribunal Act, 1973 according to which the tribunal has been formed has remedial procedure of its own for the accused persons.

However in the context of the allegations brought by the **Chair-Rapporteur of the Working on Arbitrary Detention; (2) Special Rapporteur on the**

independence of judges and lawyers; (3) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and (4) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the case of Mr. Salauddin Quader Chowdhury the prosecution and the procedures followed by the tribunal need to be clarified of the transparency and neutrality as the prerequisite of a fair trial and as the commitment of the present government.

The key elements relating to the prosecution under the tribunal which ensure a fair, transparent and speedy trial are as follows,

A. Pre-charge detention: whether arbitrary or not?

So far seven persons allegedly responsible for committing the offence(s) as enumerated in the ICTA 1973 have been detained only when on request of prosecution the Tribunal is satisfied that such detention was necessary for effective and proper investigation and also for effective and expeditious trial. Investigation Agency is entrusted to investigate into 40 years old system crimes committed in violation of international humanitarian law, Genocide Convention. Considering the needs of effective investigation on issues connected, those persons allegedly responsible for perpetration of offences enumerated in section 3(2) of the ICTA 1973 have been ordered to be detained by the Tribunal. In no way they can be said to be arbitrarily detained.

Additionally, Different countries follow different processes. It should be kept in mind that different countries have different procedures and different courts have had different procedures. **The Cambodia court which follows a more continental law basis system has, in fact, detained the four cabinet members of the Pol Pot government for close to three years before formal charging, during the investigation process.** So we see that surely it has international precedence. It is permitted to detain people, though the conditions of their continued detention have to be subject to judicial review. Thus, **the persons detained cannot be said to have been arbitrarily detained on any count.**

In ICT-BD, question of bail at pre-charge stage is being periodically reviewed and the Tribunal has formulated explicit jurisdiction in Rule 9(6) of ICT-BD in this regard. **Rule 9(6) of ICT-BD reads as below:**

“After every three months of detention of the accused in custody the investigation officer through prosecutor shall submit a progress report of investigation before the Tribunal on perusal of which it may make a review of its order relating to the detention of the accused.”

We have found that recently *Pauline Nyiramasuhuko* and 5 others have been convicted by the ICTR and they had been in detention for long 14

years and the accused persons facing trial that has been commenced few months back in ECCC, Cambodia have been in detention for more than three and half years.

However, it does not mean that the ICT-BD intends to justify such prolonged detention and that is why it has formulated rules relating to time frame of completing investigation and rules relating to release of accused on bail on condition to be imposed by the Tribunal. **Even till today many accused persons have been detained in ICTR and their trial is still in progress since couple of years. War criminal is known as enemies of human kind.** Considering the extent of horrendous crimes the suspects have been kept in detention. But in ICT-BD, as we see, within shortest period of time from the date of showing them arrested/detained before this tribunal the IA has been able to complete investigation in most cases.

B. Independence of Lawyers and Judges

Special Rapporteur on the Independence of Judges and Lawyers raised the question of neutrality of the Tribunal formed under the domestic law of Bangladesh and thus the independent and neutral functioning of the International Crimes Tribunal, the appointed Judges and Lawyers thereof as well as their acceptability is of much concern in the international forum.

The International Crimea Tribunal, Bangladesh, herein after ‘the Tribunal’, is a domestic Tribunal formed under section 6 of the International Crimes (Tribunals) Act, 1973, herein after the Act, to deal with the offences mentioned in section 3 of the Act, section 6 has laid down the provisions regarding the procedure of appointment, qualifications of the judges of the Tribunal and its functional independence. Section 6 of the Act runs hereunder:

6.(1) For the purpose of section 3, the Government may, by notification in the official Gazette, set up one or more Tribunal, each consisting of a Chairman and not less than two and more than four other members.

(2) Any person who is or is qualified to be a Judge of Supreme Court of Bangladesh or has been a Judge of any High Court or Supreme Court Which at any time was in existence in the territory of Bangladesh or who is qualified to be a member of General Court Martial under any service law of Bangladesh may be appointed as a Chairman or member of a Tribunal.

(3) The permanent seat of a Tribunal shall be in Dacca: Provided that a Tribunal may hold its sittings at such other place or places as it deems fit.

(4) If any member of a Tribunal dies or is due to illness or any other reason, unable to continue to perform his functions, the Government may, by notification in the

official Gazette, declare the office of such member to be vacant and appoint another person qualified to hold the office.

(5) If, in the course of a trial, any one of the member of a Tribunal is, for any reason, unable to attend any sitting thereof, the trial may continue before the other members.

(6) A Tribunal shall not, merely by reason of any change in its membership or the absence of any member thereof from any sitting, be bound to recall and re-hear any witness who has already given or produced before it.

(7) If, upon any matter requiring the decision of a Tribunal, there is a difference of opinion among its members, the opinion of the majority shall prevail and the decision of the Tribunal shall be expressed in terms of the views of the majority.

(8) Neither the constitution of a Tribunal nor the appointment of its Chairmen or members shall be challenged by the prosecution or by the accused persons or their counsel.

The Government has established the Tribunal by appointing one senior Judge of Bangladesh Supreme Court, High Court Division as its Chairman and another Judge of the High Court Division along with a Retired District and Sessions Judge as its members in consultation with the Bangladesh Supreme Court following due process mentioned in the aforesaid section who are discharging their responsibility independently.

Section 3 of the Act deals with the jurisdiction of the Tribunal which runs hereunder:

3.(1) A tribunal shall have the power to try punish any person irrespective of his nationality who, being a member of any armed, defense or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the following crimes.

(2) The following acts or any of them are crimes within the jurisdiction of a Tribunal for which there shall be individual responsibility, namely:-

(a) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;

(b) Crimes against peace : namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties agreements or assurances;

(c) Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:

- (i) Killing members of the group
- (ii) Causing serious bodily or mental harm to members of the group;
- (iii) Deliberately inflicting on the group condition of life calculated to bring about its physical destruction in whole or in part;
- (iv) Imposing measures intended to prevent births within the group;
- (v) Forcibly transferring children of the group to another group;

(d) War Crimes: namely, violation of laws or customs of war which include but are not limited to murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh; murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages and detainees, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(e) Violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949;

(f) Any other crimes under international law;

(g) Attempt, abetment or conspiracy to commit any such crimes;

(h) Complicity in or failure to prevent commission of any such crimes.

The investigation regarding the crimes mentioned in the aforesaid section 3 is carried out by the investigating agency appointed by the Government under section 8 of the Act and the Prosecutors appointed by the Government under section 7 of the Act conduct the prosecution before the Tribunal. Section 7 of the Act runs below;

7.(1) The Government may appoint one or more persons to conduct the prosecution before a Tribunal on such terms and conditions as may be determined by the Government; and every such person shall be deemed to be a Prosecutor for the purposes of this Act.

(2) The Government may designate one of such persons as the Chief Prosecutor.

The Government has appointed the Chief prosecutor and other prosecutors for conducting the prosecution before the Tribunal from the competent and experienced practicing lawyers from different Bars of the Country following due process as per provision enshrined in the above mentioned section 7 of the Act.

Any accused person has case under liberty to appoint his own lawyers considering his capability to defend his case under the Act. Even the Act has provision for appointment of a defense counsel under section 12 of the Act if the accused person is not represented by counsel. Section 12 of the Act runs hereunder:

Where an accused person is not represented by counsel, the Tribunal may, at any stage of the case, direct that a counsel shall be engaged at the expense of the Government to defend the accused person and may also determine the fees to be paid to such counsel.

The appointed Judges and Prosecutors of the Tribunal as the Lawyers of the accused persons have been functioning independently within the purview of the provisions enshrined in the Act free from any sorts of influence of the Government.

C. Torture, Cruel, Inhuman and Degrading Behavior to Mr. Salauddin Quader Chowdhury in the Prison

The tribunal ensured that all national and international norms and standards of treatment have been followed during the imprisonment of all detained persons in the course of prosecution including Mr. SQC. Like as it is stated in Human Rights Council Resolution 8/8 “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment”

ICT-BD is clearly functioning in conformity to this statement.

Article 4(1) of the Convention against Torture states that

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

Again Article 12 of the convention requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed and article 7 of the convention requires state parties to prosecute suspected perpetrators of torture.

It is the commitment of the present government to comply with these provisions because Bangladesh became state party to the convention under the auspices of the present government in 1998 as the then government.

An Inspection Committee was formed to look into any allegation of torture or degrading treatment of Mr. Salauddin Quader Chowdhury during his detention period as contained in the complaint. The Inspection Committee examined 51 witnesses from the prison, the hospital detention centre and from concerned hospital personnel who were in charge of Mr. Salauddin Quader Chowdhury’s medical treatment, and it has been proven beyond doubt that the authority maintained all expected high standards of

physical and medical care as the OHCHR drew the attention of the Government to do so.

Rule 22(2) of the Standard Minimum Rules for the Treatment of Prisoners provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceuticals supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers"

Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world"

In light of the abovementioned articles and Bangladesh's participation and contribution in relevant conventions, it is clearly reaffirmed that the prison authority of Bangladesh where Mr Salauddin Quader Chowdhury was detained ensured highest form of security and safety and did not afflict any torture or degrading behavior with Mr. Salauddin Quader Chowdhury.

As the Inspection Committee inspected it has been found in the statements of all the witnesses. Mr. Shubhash Kumar Bosh, Jailer, Kashimpur Central Jail, made it clear in his statement that under his supervision in Kashimpur Jail Mr. Chowdhury was not tortured at all. Deputy Jailer Mr. Noor Mohammad Mridha, Mr. Md. Moshfiqur Rahman, Chief Security Guard Md. Abdur Razzak etc stated that Mr. Chowdhury was not seemed to be sick on 19-04-2011 when he was going to the Court which is alleged in the summery and allegations of blood stains in his cloths also is not true. Even Dr. A.S.M. Ahsan Habib, Deputy Surgeon, Kashimpur Jail stated that the alleged torture bu him on Mr. Chowdhury on 19-04-2011 is false because at that morning he came to the Jail at 8.40 am when Mr. Chowdhury was not present at the jail because he left for the court at 8.15 am (the registry book is attached herewith).

C. Providing notice of formal charge

Article 9(2) ICCPR contains-"Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. "This provision compatibly reflects in the **Rule (3) of ICT-BD that provides-**

"At the time of executing the warrant of arrest under sub-rule (2) or later on, copy of allegations is to be served upon such person."

Further, **Rule 18 (4) of ICT-BD provides**

“The Chief prosecutor shall file extra copies of formal charge and copies of other documents for supplying the same to the accused(s) which the prosecution intends to rely upon in support of such charges so that the accused can prepare his defense.” Thus, right to disclosure has been adequately ensured so that the suspect person can have opportunity to defend his own interest.

In our legal system, at the investigation stage, there is no room to infer that the allegation under investigation is vague. It is not true that the allegation was not informed to the accused instantly after their detention. Therefore and since the Rules contain explicit provision as to right to know the allegation after arrest/detention, right to disclosure of charge(s) and to have assistance of interpreter, as contained in the ICTA 1973 it is not correct to say that accused persons’ liberty has been curtailed in contravention of Article9(2) and 14(3)(a) ICCPR.

C. To understand charge and to have adequate opportunity to defend

Adequate time to get preparation of defense is one of key rights that signifies the fairness of the proceedings. Article 14(3)(b) of the ICCPR states,

“To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”

This provision has been attuned in **Section 16(2) of the ICTA 1973** that reads,

“A copy of the formal charge and a copy of each of the documents lodged with the formal charge shall be furnished to the accused person at a reasonable time before the trial; and in case of any difficulty in furnishing copies of the documents, reasonable opportunity for inspection shall be given to the accused person in such manner as the Tribunal may decide.”

Additionally, what time is considered adequate depends on the circumstances of the case. The ICT-BD is quite conscious ensuring this key right of defense. There has been no single instance that the ICT-BD refused to grant time on appeal or request of the defense side. The Tribunal, through judicial practices, has already developed the notion that each party must have a reasonable opportunity to defend its interests. It is to be mentioned that there has not been a single instance that any of the accused persons has been denied any of his right to have time necessary for preparation of his defense or interest.

D. Right of accused during interrogation

There are rules in some other tribunals that if an accused person is questioned, he has the right to have his counsel present during that questioning with prior information of that right to him and that if he can't afford a counsel, then a counsel will be appointed to represent him. Besides that, if he wants to, then he can voluntarily waive that right and talk by himself.

Such kind of right intends to prohibit coercion, torture etc. Practice of ensuring such safeguard has been developed in ICT-BD despite absence of explicit rules and the Tribunal has made it ensured that at the time of interrogation defence counsel and a doctor shall be present in a room adjacent to that where the accused is interrogated and during break time they are allowed to consult the accused.

E. Key elements of fair trial

It is not correct to say that current legal framework of ICT-BD does not guarantee the required procedural protections of the defendant's right to fair trial both in pre-trial phase and during trial. **The ICTA 1973 and the Rules framed there under explicitly and adequately offer all the key elements of fair trial which are (a) Fair and impartial tribunal, (b)Public trial,(c)Accused to know of the charges against him and the evidence against him,(d)Entitlement of having copy of formal charge together with documents collected during investigation,(e)Adequate time of getting preparation of defense,(f)Services of a defense counsel and interpreter,;(g) Full opportunity to present his defense, ' including the right to call witnesses and produce evidence before the tribunal, (h) Right to cross-examine witnesses, In the event of conviction, imposition of a sentence which does not outrage the sentiments of humanity, (i) .Right of appeal against final verdict.**

The above rights of defense and procedure given in the Act of 1973 and the Rules of Procedure are the manifestations of the "due process of law" and "fair trial" which make the legislation of 1973 more humane, jurisprudentially resonance and legally valid. The Tribunal has made it ensured that at the time of interrogation defense counsel and a doctor shall be present in a room adjacent to that where the accused is interrogated and during break time they are allowed to consult the accused, despite the fact that statement made to investigation officer shall not be admissible in evidence.

G. Rights of defense embodied in the ICTA 1973

- At least three weeks before commencement of trial list of witnesses intended to be produced along with recorded statement of such witnesses or copies thereof and copies of documents which the prosecution intend to rely have to be furnished (**Section 9(3)**)
- Copy of formal charge together with documents collected during investigation shall be furnished to accused person at a reasonable time before the trial [**section 16(2)**]
- Before calling additional witnesses or tendering any further evidence notice is to be given to the defense [**proviso of section 9(4)**]. Objects of these sections are to provide adequate opportunity for getting preparation of defense through due process.
- The accused shall have right to examine witnesses [**section 10(1)**]
- the right to interpreter [**section 10(3)**]; the right to expeditious trial [**section 11(3)**]
- the right to have counsel engaged at the expense of the government (**section 12**)
- the right to remain free from compulsion in making confession [**section 14(2)**];
- the right to inspect document [**section 16(2)**];
- the right to conduct own defense [**section 17(2)**];
- the right to cross-examine prosecution witnesses [**section 17(3)**]
- the right to appeal [**section 21(1)**]

The Rules of Procedure (ROP) has ensured all the possible and **universally recognized rights of defense which principally include—**

- Prohibition of arbitrary arrest. Only with the order of the tribunal an order of arrest or detention may be done. (**Rule 9**)
- Prohibition of prosecution on frivolous charge (**Rule 29[2]**)
- Prohibition of coercion, duress or threat of any kind (**Rule 16(2)**)
- Prohibition of self incrimination by making confession [**Rule 25(2) & section 14(2)**]

- Right to be enlarged on bail. [**Rule 34(2)**]
- Discharge an accused if the tribunal finds no adequate reason to presume that the accused committed the offence charged (**Rule 37**).
- Adequate time for preparing defense [**Rule 38(2)**]
- The tribunal may allow appearance of foreign counsel for either party if Bangladesh Bar Council permits so (**Rule 42**)
- Appointing defense counsel at state’s expense (**Rule 43**)
- Presumption of innocence [**Rule 43(2)**]
- Burden of Proof lies on prosecution (**Rules 50-54**)
- Right to speedy trial [**Rule 43(5)**]
- Prohibition of self incrimination or making confession [**Rule 43(7)**]

Finally, we see that the ICTA 1973 and the Rules explicitly offer the key elements of due process and fair trial procedure. The above rights of defense and procedure given in the Act and the Rules of Procedure are the glaring manifestations of the “due process of law” and “fair trial” which make the legislation of 1973 jurisprudentially sound and legally valid. We do not consider inferring that Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which recognized the equality before courts or tribunals, has been denied in any manner, in prosecuting the persons responsible for perpetration of system crimes committed in violation of customary international law.

A. Right to defend in person and legal assistance

Article 14(3) (d) of the ICCPR states, “To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

Section 17(2) of the ICTA 1973: This provision is reflected in Section 17(2) of the ICTA 1973 which states, “An accused person shall have the right to conduct his own defence before the Tribunal or to have the assistance of counsel.”

B. Right to examine witness

Article 14(3) (e) of the ICCPR states, “To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

Section 17(3) of the ICTA 1973: This provision is reflected in Section 17(3) of the ICTA 1973 which states, “An accused person shall have the right to

present evidence at the trial in support of his defence, and to cross-examine any witness called by the prosecution.”

Investigation into the case:

Bangladesh, as a state party to inter alia, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Prevention and Punishment of the Crime of Genocide, recognizes its responsibility towards its citizens and is committed to fulfill its obligations to the citizens of Bangladesh. Therefore it is of supreme responsibility of the government to try the war criminals but preserving consistency with the constitution.

In this connection, in response to the allegations brought by the **Chair-Rapporteur of the Working on Arbitrary Detention; (2) Special Rapporteur on the independence of judges and lawyers; (3) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and (4) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** regarding the case of Mr. Salauddin Quader Chowdhury the Jail authority formed an Inspection Committee comprised of 03 members. The members are:

- | | |
|---|----------|
| a) Mr. Md. Fazlur Rahman
Deputy Inspector General of Prison
Chittagong and Shylhet Division | Chairman |
| b) Mr. Md. Mizanur Rahman
Caretaker
Shirajganj District Jail | Member |
| c) Mr. Al Mamun
Caretaker
Chandpur District Jail | Member |

The Inspection Committee examined 52 witnesses. Mr. Salauddin Quader Chowdhury was detained in 05 jails in different parts of Bangladesh. The committee went to each and every jail and inspected everything. The witnesses examined include the Jailer of each jail, Deputy Jailer, Security Guards, co-inmates of Mr. Salauddin Quader Chowdhury, Jail Doctors, Jail Surgeons etc. and every one of them satisfied the committee about the safety and security of Mr. Salauddin Quader Chowdhury. In the light of these evidence the response of the questions raised are as follows,

- 1. Are the facts alleged in the above summary of the case accurate?**

Mr. Salauddin Quader Chowdhury is imprisoned under trial on the following case;

Serial No.	Case No. and Article
01.	Case No. 05-Date 21/12/2010,G,R-194/2010, of Fotikchori Thana, Article-124-Ka/505 PC
02.	CaseNo.-55(6)2010, of Ramna Thana Article-143/147/149/435/326/307/427 Added 302 PC
03.	International Criminal Tribunal, Miscellaneous Case No.-4/2010

The fact is, the allegations made in the summery against the authority are not true. First of all he had been arrested for an incident occurred in June 2010 but after that he was charged for crime against Humanity. In no way he can be said to be arbitrarily detained or the accusation alleged in the summery are true.

As an international precedence it can be seen in the case of ICTR or Cambodia Court that pre charge detention exists for the sake of ensuring justice. Even till today many accused persons have been detained in ICTR and their trial is still in progress since couple of years. Considering the extent of horrendous crimes the suspects have been kept in detention. But in ICT-BD, as we see, within shortest period of time from the date of showing them arrested/detained before this tribunal the IA has been able to complete investigation in most cases.

Again the examination of witnesses made it clear that he has been provided all the facilities that could be possible in prison. As it is described in the complaint, he has not been detained in solitary confinement. The committee visited all the places he was imprisoned and took statement of all connected in this regard. Upon the investigation of the places and from the statements of the witnesses it is very much clear that he was not detained in solitary confinement. As a matter of fact there is no proof that his human rights was or has been violated.

. So in no way the alleged facts mentioned in the summery like arbitrary detention of Mr. Salauddin Quader Chowdhury, violation of his human rights or solitary confinement are true.

2. Has a complaint been lodged by or on behalf of the alleged victim?

So far the committee knows, a complaint has been filed by his wife on behalf of him addressing the Secretary of Home Affairs. Investigation has been made on that compliant.

3. Please indicate what measures are being taken to provide Mr. Chowdhury with independent and adequate medical treatment? What measures are being taken to ensure the right to health of Mr. Chowdhury?

The Inspection Committee examined a number of doctors to make it clear that whether Mr. Salauddin Quader Chowdhury has been rejected of necessary medical treatment and as it has been found, the doctors made it clear in their statement that wherever he was detained he has been provided highest form of medical treatment.

After he became a prisoner the Prison Doctors are providing medical treatment to him. In Kashimpur Jail when Mr. Chowdhury got sick, he was brought to Bangabandhu Medical College, the highest standard of medical college in the country. At the time of being in the Hospital, specialized doctors from there and even while he was in jail, doctors from that hospital specially took care of him. It is worthy to mention that on 04—01-2011 he was sent to Bangabandhu Medical College for medical treatment from the Narayanganj District Jail. On 06-02-2011 he was provided medical treatment by Cardiac Specialist Doctor Nurul Huda from Gazipur General Hospital which was near to his place of imprisonment and on 02-04-2011 02 neurologists were brought from Bangabandhu Medical College for his treatment. Medical Papers are enclosed herewith.

4. What measures are being taken to ensure the enjoyment of the right to the highest attainable standard of health of detainees?

As it is stated in Rule 22(2) of the Standard Minimum Rules for the Treatment of Prisoners, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceuticals supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers”

The present government is committed to ensure the highest attainable standard of health care. Especially here in the case of prisoners accused of crimes against humanity it has been really tricky for the present government because not only for the international reputation also to make the prosecution under the tribunal transparent and neutral it is of utmost priority to provide highest attainable standard of medical care and health facilities.

There are doctors in every jail of Bangladesh to ensure medical treatment for the detainees and to the best possible means treatment is provided everywhere. Even if it is needed, specialist doctor is provided or the patient is transferred to a better hospital.

5. Please provide the details and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

The committee is not aware of any such investigation or the result, if there is any. But as far as any investigation, medical examinations and judicial or other inquiries are concerned the Inspection Committee has found upon the examination of 52 persons that all the jail authorities provided highest medical care and if it is needed medical examination for Mr. Sal;uddin Quader Chowdhury. As the doctors stated, it has been proven clearly that he had not been in a condition which indicates or can show any sort of physical torture.

For his health check up medical examination was quite regular but since the allegations of torture and degrading behavior stated in the summary had no proof of evidence so there was no such inquiry.

6. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

The committee is not aware of any such matter.

7. Please indicate which measures were taken to ensure Mr. Chowdhury's rights to legal representation, to be informed of the criminal charges against him and to have access to a lawyer.

It is indeed related to prosecution. But it is evident that in the jail his relatives and his lawyer get chances to meet him regularly.

As a state party Bangladesh does comply with the provisions of ICCPR. **Article 9(2) ICCPR contains-** "*Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*" This provision compatibly reflects in the **Rule (3) of ICT-BD that provides-**

"At the time of executing the warrant of arrest under sub-rule (2) or later on, copy of allegations is to be served upon such person."

Further, **Rule 18 (4) of ICT-BD provides**

"The Chief prosecutor shall file extra copies of formal charge and copies of other documents for supplying the same to the accused(s) which the prosecution intends to rely upon in support of such charges so that the accused can prepare his defense." Thus, right to disclosure has been adequately ensured so that the suspect person can have opportunity to defend his own interest.

Again in **Section 17(2) of the ICTA 1973** it is stated that *“An accused person shall have the right to conduct his own defense before the Tribunal or to have the assistance of counsel.”*

In our legal system, at the investigation stage, there is no room to infer that the allegation under investigation is vague. It is not true that the allegation was not informed to the accused instantly after their detention. Therefore and since the Rules contain explicit provision as to right to know the allegation after arrest/detention, right to disclosure of charge(s) and to have assistance of interpreter, as contained in the ICTA 1973 it is not correct to say that Mr. Salauddin Quader Chowdhury was not informed of the criminal charges against him.

Adequate time to get preparation of defense is one of key rights that signifies the fairness of the proceedings. There has been no single instance that the ICT-BD refused to grant time on appeal or request of the defense side. The Tribunal, through judicial practices, has already developed the notion that each party must have a reasonable opportunity to defend its interests. It is to be mentioned that there has not been a single instance that any of the accused persons has been denied any of his right to have time necessary for preparation of his defense or interest.

ICT-BD despite absence of explicit rules and the Tribunal has made it ensured that at the time of interrogation defence counsel and a doctor shall be present in a room adjacent to that where the accused is interrogated and during break time they are allowed to consult the accused.

8. Please indicate whether Mr. Chowdhury was tried in his absence. If so, please explain why and indicate which legal remedies were made available to him.

Article 14(3) (d) of the ICCPR states, *“To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”*

This provision is reflected in **Section 17(2) of the ICTA 1973** which states, *“An accused person shall have the right to conduct his own defence before the Tribunal or to have the assistance of counsel.”*

Again **Article 14(3) (e) of the ICCPR** states that, *“To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”*

This has been reflected in **Section 17(3) of the ICTA 1973** which states, *“An accused person shall have the right to present evidence at the trial in support of his defense, and to cross-examine any witness called by the prosecution.”*

Certainly it can be said the tribunal in conformity with the provisions of ICCPR tries to ensure the rights of the accused embodied in ICCPR and the International Crimes Tribunal Act 1973 has been incorporated to that regard. The tribunal is functioning according to that and upon examination of the witnesses it is clear Mr. Salauddin Quader Chowdhury availed all the legal rights he is entitled particularly in case of prosecution.

Comments/Remarks:

1. Matters figured out in the discussion are not related to prison. In the prison detainees are provided services in case of accommodation, food and medical care according to the Prison Act.
2. Honorable Member of the Parliament Mr. Salauddin Qader Chowdhury who is under trial here in this case has been provided facilities in the prison according to the Prison Act.

