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HAUT COMMISSARIAT DES NATIONS UNIES
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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 17/2 and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the death sentence pronounced in absentia by the Bangladesh International Crimes Tribunal against Mr. **Abdul Kalam Azad**, as well as the life imprisonment sentence pronounced against Mr. **Abdul Kader Molla**.

We draw the attention of your Excellency's Government to two previous communications sent on 3 October and 16 November 2012, in which serious concerns were expressed regarding the independence and impartiality of both judges and prosecutorial services of the Bangladesh International Crimes Tribunal. In these communications concerns were also expressed regarding serious allegations of unfair trial and lack of due process in the following cases before the International Crimes Tribunal: Messrs. Delawar Hossain Sayedee, Salauddin Quader Chowdhury, Motiur Rahman Nizami, Ghulam Azam, Muhammad Kamaruzzaman, Ali Ahsan Mohammad Mujahid, Abdul Kader Molla, Mir Quasem Ali, and Islam Azharul. We regret that to date we have not received a substantive response from Your Excellency's Government to these two urgent appeals.

According to the new information received, and in the context of the allegations described in the Urgent Appeals of 3 October and 16 November 2012:

On 21 January 2013, the International Crimes Tribunal in Bangladesh issued its first verdict, which resulted in a death sentence pronounced in absentia against Mr. Abdul Kalam Azad for genocide and crimes against humanity.

The circumstances in which the verdict was passed are reportedly controversial. While it is the first verdict of the Tribunal, the case of Mr. Azad is said to be the last case to come before the second Chamber of the Tribunal and Mr. Azad was indicted after all the other accused who are currently before the second Chamber of the Tribunal.

It is alleged that political pressure was exercised on the Tribunal to dispose of the case of Mr. Azad before the others. In a conversation on 14 October 2012 between the former Chairman of the first Chamber of the Tribunal and an expatriate Bangladeshi lawyer assisting the Tribunal, reference was allegedly made to such political pressures. At the time of the conversation, the charges against Mr. Azad had not been framed by the Tribunal.

On 4 November 2012, Mr. Abdul Kalam Azad was indicted by the second Chamber of the Tribunal. On 26 November 2012, the prosecution opened its case and examined the first witnesses. 22 prosecution witnesses were reportedly examined, and the prosecution case was closed on 22 December 2012. No defence witness was reportedly examined. Both the prosecution and the defence reportedly concluded their summing up on 26 December 2012.

The trial of Mr. Abdul Kalam Azad was conducted in absentia. A State-appointed defence lawyer conducted the case on behalf of the accused. The adequacy of this lawyer was questioned as he is reportedly the Co-Chairman of the Khilket Branch of the Bangladesh Awami League and an Awami League supporter, one of the two main political parties currently the governing party and a strong supporter of crimes from the 1971 liberation war being tried before the International Crimes Tribunal. It is further reported that the defence lawyer was unable to answer to questions of the Tribunal on points of law. It is also alleged that he made incorrect submissions in the case, showing his lack of understanding and experience of international criminal law. Finally, the defence lawyer's cross-examination of witnesses is said to have been too short and ineffective.

It is reported that neither the defence counsel nor the family of Mr. Azad received a copy of the full verdict, and the Tribunal allegedly stated that it was because Mr. Azad is in hiding. The Awami League reportedly publicly welcomed the verdict and stressed that Azad will be found and executed.

On 5 February 2013, the Tribunal passed a life imprisonment sentence against Abdul Kader Molla. The serious unfair trial allegations in the case of Mr. Molla, among others, were already detailed in the two urgent appeals referred to above and sent on 3 October and 16 November 2012. More verdicts, including possibly of death sentence, are expected in the coming weeks, regarding the other accused before the two Chambers of the Tribunal.

Without making a judgment as to the accuracy of the information made available to us, we would like to express serious concern that the death penalty may have been imposed and be carried out against Mr. Azad, following a trial which did not comply with

international human rights law provisions regarding fair trial and due process guarantees. As stated in previous communications, we would like to express serious concern about the fairness and due process of the proceedings which led the International Crimes Tribunal to pass a sentence of death against Mr. Azad and a sentence of life imprisonment against Mr. Molla.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent the execution of Mr. Abdul Kalam Azad, which, if carried out, would be inconsistent with acceptable standards of international human rights law. We call upon your Excellency's Government not to execute Mr. Abdul Kalam Azad, and to commute without delay the death sentence imposed against him.

We would like to bring to the attention of your Excellency's Government that, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial and due process safeguards, as provided in articles 6(2) and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Bangladesh on 6 September 2000. Furthermore, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

Regarding the fact that Mr. Azad was tried in absentia, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) 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."

Regarding the alleged inadequacy of the defence lawyer, we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 15, which states: "Lawyers shall always loyally respect the interests of their clients."; and principle 14, which states: "Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and

diligently in accordance with the law and recognized standards and ethics of the legal profession.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights to a fair trial and due process of Mr. Azad and Mr. Molla, as well as that of the other accused before the International Crimes Tribunal, in compliance with the above-mentioned instruments.

Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide detailed information on the judicial proceedings initiated against the above mentioned persons and indicate how these proceedings comply with the requirements and guarantees of a fair trial and due process as enshrined in article 14 of the ICCPR, as well as the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, and United Nations Safeguards Protecting the Rights of those Facing the Death Penalty.

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to halt the execution and to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers

Christof Heyns

Special Rapporteur on extrajudicial, summary or arbitrary executions