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Mandate of the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: UA G/SO 214 (3-3-16)
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3 October 2012

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 17/2.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding serious allegations of lack of independence and impartiality of both the judiciary and prosecutorial services of the **Bangladesh International Crimes Tribunal**, as well as of risk of imposition of the death penalty by the Tribunal following unfair trials. In particular, I would like to draw the attention of your Excellency's Government to information I have received regarding unfair trial and lack of due process allegations in cases being heard by the Tribunal against the nine following defendants who are currently held in pre-trial detention and are reportedly at risk of being subjected to the death penalty: Mr. **Delwar Hossain SAYEDEE**; Mr. **Salauddin Quader CHOWDHURY**; Mr. **Motiur Rahman NIZAMI**; Mr. **Ghulam AZAM**; Mr. **Muhammad KAMARUZZAMAN**; Mr. **Ali Ahsan Mohammad MUJAHID**; Mr. **Abdul Kader MOLLA**; Mr. **Mir Quasem ALI**; and Mr. **Islam AZHARUL**.

The UN Working Group on Arbitrary Detention considered in its opinion No. 66/2011 (Bangladesh) that the deprivation of liberty of Messrs Motiur Rahman Nizami, Abdul Kader Molla, Muhammad Kamaruzzaman, Ali Ahsan Mohammad Mujahid, Delwar Hossain Sayedee, and Salauddin Quader Chowdhury, is arbitrary, and constitutes a breach of article 9 of the Universal Declaration on Human Rights (UDHR), and article 9 of the International Covenant on Civil and Political Rights (ICCPR) on the ground of the gravity of total or partial non-observance of the international norms relating to the right to a fair trial.

Mr. Salauddin Quader Chowdhury was the subject of a previous Joint Urgent Appeal by the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment dated 21 February 2011. In this previous letter, the experts expressed serious concerns regarding the physical and mental integrity of Mr. Chowdhury after his arrest, as well as failure to investigate allegations of torture while in prison. I thank your Excellency's Government for the reply to this letter dated 14 May 2012.

According to the information received:

The Bangladesh International Crimes Tribunal was established in 2010 pursuant to the International Crimes (Tribunal) Act 1973, as modified in 2009, to prosecute those responsible of genocide, crimes against humanity, war crimes and other crimes under international law, in particular in the context of the war of national liberation of 1971. In late March 2012, a second Tribunal was constituted under the same Act to share the growing workload. The International Crimes (Tribunal) Act 1973 was further amended in 2012, and a provision for transferring cases in front of the first Chamber to the new Chamber was included.

Mr. Delwar Hossain Sayedee, aged 72, Vice-President of Jamaat-e-Islami, was reportedly arrested on 29 June 2010 without warrant. On 22 July 2010, the Chief Prosecutor of the International Crimes Tribunal allegedly made an application to the Tribunal for Mr. Sayedee's arrest under the International Crimes (Tribunal) Act 1973. On 2 November 2010, the Tribunal reportedly ordered that Mr. Sayedee remain in police custody. Mr. Sayedee was allegedly charged by the International Crimes Tribunal on 3 October 2011.

Mr. Motiur Rahman Nizami, aged 69, the leader of Jamaat-e-Islami, was arrested on 29 June 2010 without warrant. He was charged by the International Crimes Tribunal on 28 May 2012.

Mr. Ghulam Azam, aged 89, former leader of Jamaat-e-Islami, was reportedly arrested on 11 January 2012 following an application by the Chief Prosecutor of the International Crimes Tribunal; it is reported that he was formally charged on 13 May 2012.

Mr. Salauddin Quader Chowdhury, age unknown, member of the Bangladesh National Party, was allegedly arrested on 16 December 2010 in a case relating to an arson attack committed on 26 June 2010. Formal charges were reportedly submitted on 14 November 2011 by the prosecution and the order framing the charges was reportedly released on 4 April 2012.

Mr. Muhammad Kamaruzzaman, age unknown, Assistant Secretary-General of Jamaat-e-Islami, was reportedly arrested on 13 July 2010. The formal charge petition was allegedly submitted by the prosecution on 11 December 2011 and the final charge order was allegedly passed on 4 June 2012.

Mr. Ali Ahsan Mohammad Mujahid, aged 64, Secretary-General of Jamaat-e-Islami, was allegedly arrested on 29 June 2010. He was reportedly granted bail on

30 June 2010 and re-arrested on 2 October 2010 in relation to the crimes he is charged before the International Crimes Tribunal. The formal charge petition was allegedly submitted by the prosecution on 11 December 2011 and Mr. Mujahid was reportedly formally charged on 21 June 2012.

Mr. Abdul Kader Molla, aged 64, Assistant Secretary-General of Jamaat-e-Islami, was reportedly arrested on 13 July 2010. On 2 August 2010 the International Crimes Tribunal reportedly ordered Mr. Molla's arrest under the International Crimes (Tribunal) Act. The Tribunal reportedly took cognizance of the offences allegedly committed by Mr. Molla on 28 December 2011.

Mr. Mir Quasem Ali, aged 59, Head and owner of Diganta Media, was reportedly arrested on 17 June 2012 and has not yet been charged formally.

Mr. Islam Azharul, age unknown, Acting Secretary-General of Jamaat-e-Islami, was allegedly arrested on 22 August 2012 and has not yet been charged formally.

It is reported that members of the Government frequently breach the presumption of innocence of the defendants by referring to those accused before the International Crimes Tribunal as "war criminals." In particular, the Minister for Law, Justice and Parliamentary Affairs allegedly referred to "those in the dock" as being responsible for murder, rape and torture; and the State Minister for Law allegedly declared on 27 July 2012 that the first accused, Mr. Sayedee, was guilty of murder. It is further reported that the Government frequently cites members of the opposition for protecting "war criminals", whenever there is any suggestion that the trials are unfair or lacking independence.

In this context, it is reported that former supporters of the separation of West Pakistan from East Pakistan have been granted immunity from prosecution by virtue of a Presidential Decree, leaving only those who opposed the national liberation to face trial before the International Crimes Tribunal. Besides, the first and fifteenth amendments to the Constitution of Bangladesh reportedly removed fundamental rights guaranteed under the Constitution for those suspected of having committed war crimes, crimes against humanity and genocide.

Members of the Government are also alleged to have frequently given a timeline on when individuals will be arrested, when they will be charged and when the proceedings will be completed before the International Crimes Tribunal. In turn, judges have reportedly complained in open court that they are subject to attack due to the proceedings not being completed on time. It is further reported that the Minister for Law, Justice and Parliamentary Affairs declared on 31 July 2012 that six of the cases before the International Crimes Tribunal will be completed this year. Another member of the Government ruling party allegedly declared, under anonymity, that three of the accused will be executed on 16 December 2012 to signify the anniversary of independence, while the trials are reported to be still ongoing.

Moreover, it is reported that judges and prosecutors of the International Crimes Tribunal are appointed by the Government and may be moved from one Chamber to the other or removed at will, which allegedly constitutes a serious interference in the independence of the Tribunal. This appointment procedure allegedly also lacks any transparency. For instance, it is reported that Justice ATM Fazle Kabir, a member of the trial Chamber of Mr. Sayedee, was removed as judge of the first Chamber and appointed as the Chairman of the second Chamber in mid-trial. The trial is reportedly proceeding with a newly appointed judge, with no adjournment for the judge to familiarize himself with and hear the evidence already presented. It is alleged that there is no official trial record and therefore no possibility for the judge to go through the prior evidence. Furthermore, there is reportedly no ability to challenge the removal of Justice Kabir or the appointment of the new judge, raising concerns as to the fair trial of the defendant.

On 28 August 2012, another judge of the first Chamber, Justice Zaheer Ahmed, is reported to have resigned due to alleged ill-health. Allegedly, a replacement judge was appointed within 6 hours and the proceedings have continued with no adjournment. Reportedly, there are speculations that the judge in question was forced to resign by the Minister for Law, Justice and Parliamentary Affairs.

Allegedly, members of the International Crimes Tribunal also lack the necessary individual independence and impartiality. It is reported that the Chairman of the Tribunal, Justice Md. Nizamul Haque Nasim, participated in the Peoples' Inquiry Commission (or People's Court), a quasi-judicial body that prejudged cases of violence linked to the war of national liberation in the early 1990s, as a member of the Secretariat. This Commission reportedly held mock trials, where suspects were named, convicted and their effigies burnt to signify a death sentence was passed. Some of those convicted during the mock trials are reported to be among those currently accused before the Tribunal. Allegedly, the report of the Commission is listed as a prosecution exhibit and forms part of the evidence in the first trial Prosecutor v Sayadee.

It is also reported that the level of concern regarding the impartiality of the Chairman was exacerbated after he acknowledged at a hearing in Prosecutor v Ghulam Azam that he had attended a meeting of the Sammilita Ainjibi Samannay Parishad, a lawyers' platform, on 10 April 1992 in which it was allegedly demanded that the Government take legal action to execute the verdict of the Peoples' Court. In addition, it is reported that the Chairman is among the signatories to a statement issued on 11 April 1992 by the Coordination Council of the Bar Associations of Bangladesh and entitled "Take Legal Action in Relation to the Judgement of the People's Court".

Applications for the recusal of Justice Nasim have reportedly been brought by the Defense teams without success. It is further reported that the three British lawyers recruited to advise the defence wrote directly to the Chairman requesting that, in

the interests of justice, he steps down. This communication was allegedly leaked to the media and the Tribunal as a result reportedly attempted to initiate disciplinary proceedings against those lawyers with their professional regulatory body in the United Kingdom.

Moreover, the judges, in particular the Chairman of the Tribunal, have allegedly held ex-parte communications with witnesses and members of the Government. The Tribunal has even allegedly adopted a practice of issuing rulings without hearing counsel and often after having heard ex parte applications by the Prosecution. It is further reported that the Tribunal declared in several rulings that it was not required to apply international law – that it was for the Government not the courts.

The impartiality and objectivity of the Chief Prosecutor, Mr. Zead-Al-Malum, is also questioned on the basis that he reportedly was himself a freedom fighter during the war of national liberation. It is also reported that on 7 June 2009 the Chief Prosecutor presented a paper entitled “Trial of the 1971 War Crimes in Bangladesh under the International War Crimes (Tribunal) Act, 1973” to the International Association of Democratic Lawyers XVIIth Congress, in which he introduced himself as, among others, freedom fighter war 1971 and member of the Commission for 1971 war crimes trial, and he expressed the opinion that “the Al-Badar and the Al-Shams, both armed wings of the Jamaat-e-Islami fundamentalist organization masquerading as a political party, voluntarily collaborated with the Pakistanis and committed acts of arson, rape and large-scale killing”. It is further reported that the Chief Prosecutor argued the same opinions at the European Parliament in the South East Asia Committee on 31 January 2012.

It is further alleged that Prosecution witnesses had been cross-contaminated as when they were called to give their direct evidence by the Chief Investigating Officer, each witness was summoned to a safe house in Dhaka where their statements were taken in the presence of other Prosecution witnesses. The Chief Prosecutor allegedly misled the Tribunal as to the whereabouts of Prosecution witnesses who were key to the Defence cross-examination. The Prosecution is reported to have stated that the attendance of 46 of Prosecution witnesses would require unreasonable delay or expanse as per section 19(2) of the International Crimes (Tribunal) Act 1973, while failing to prove their assertions. It is alleged that the Defence were able to produce video evidence obtained by the media revealing that a number of these witnesses had stated they had provided no such statement to the Chief Investigator. Furthermore, it is reported that case diaries of the local safe house in which Prosecution witnesses stayed prior to testifying before the Tribunal revealed that the remaining witnesses had been in the custody of the Prosecution while the Prosecution claimed they were unavailable. Besides, it is reported that it transpired in cross-examination that a number of Prosecution witnesses were paid for their testimony and “good performance” in court whilst other individuals were rewarded with promotions for gathering other potential witnesses to give testimony.

Moreover, it is reported that while the Tribunal's Rules of Procedure permits foreign counsel to appear for either the prosecution or the defence with the consent of the Bangladesh Bar Council, applications under the rule have been repeatedly denied. An application for foreign counsel was reportedly submitted to the Tribunal in 2011, which ruled that the matter fell within the jurisdiction of the Bar Council. In turn, the Bar Council allegedly ruled that it had no authority to permit foreign counsel to appear in any court in Bangladesh unless they were citizens of Bangladesh. It is reported that the ex-officio Chairman of the Bar Council is the Attorney General and had appeared alongside the Prosecution in several key hearings of the International Crimes Tribunal. Member of the Government, including the Minister for Law, Justice and Parliamentary Affairs, are also reported to have issued statements that the Bar Council cannot give consent to any foreign lawyer appearing at the Tribunal.

In addition, it is reported that the accused were interrogated in the absence of counsel. For instance, in the case of Mr. Mir Quasem Ali, following his arrest and order for detention, the Tribunal allegedly granted a prosecution request for him to be interrogated in a safe house and refused the defence application to have counsel present during the interrogation and the defence motion, in the alternative, to allow privileged communication with counsel prior to the interrogation.

Additionally, it is reported that the defence teams were allocated insufficient time between the formal charges and the commencement of the trial to properly and adequately prepare (three weeks).

It is further reported that the defence teams have to operate in an atmosphere of hostility and intimidation. Foreign counsel for the Defense, Barrister Toby Cadman, was allegedly expelled from Bangladesh in August 2011. The lead counsel for the detained Jamaat-e-Islami leaders, Barrister Abdur Razzaq, was reportedly falsely accused in the context of the 19 September 2011 political demonstrations, while he in fact was abroad, and other members of the defence teams have allegedly been subjected to intimidation and harassment. Key defence witnesses are also reported to have been threatened with arrest and criminal charges if they give evidence for the defence.

It is also reported that the ordinary domestic rules of evidence and procedure contained under the Criminal Procedure Act and Criminal Evidence Act have been removed and as a result the International Crimes Tribunal is not bound by any technical rules of evidence, has the authority to amend its own rules, and will employ a non-technical procedure in order to expeditiously admit evidence.

In addition, under the Tribunal's Rules of Procedure, there is reportedly no obligation on the Prosecution to disclose exculpatory material to the defence and no opportunity for discovery. Important documents, such as investigative and police reports, are allegedly not subject to disclosure, as the Tribunal reportedly

ruled in Sayedee that prior inconsistent statements of prosecution witnesses are not subject to disclosure and may not be put to the witness during cross-examination.

In Prosecutor v Sayedee, disclosure of the defence case reportedly had to be made prior to the commencement of the trial proceedings pursuant to Rule 18(5) of the Tribunal's Rules of Procedure, notwithstanding the fact that the Prosecution case had yet to open.

Moreover, it is alleged that in Prosecutor v Sayedee, the proceedings were allowed to continue in the absence of the accused after he suffered heart attack and had to stay in the hospital.

I would like to express serious concern about the independence and impartiality of both judges and prosecutorial services of the Bangladesh International Crimes Tribunal. I also wish to express my grave concern that the arrest, detention and trial of Messrs Delwar 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, do not comply with international human rights law provisions regarding fair trial and due process. Finally, I am concerned about the ability of the Defense teams to discharge their professional functions adequately and following the international principle of equality of arms.

While I do not wish to prejudge the accuracy of these allegations, I wish to draw your Excellency's attention to article 14(1) of the ICCPR that the Government of Bangladesh acceded to on 6 September 2000, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Principle 5 of the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), further states: "Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office."

In addition, principle 6 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, states: "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

Concerning information I have received regarding the arrest and detention of Messrs Delwar 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, I would like to refer your Excellency's Government to article 9(2) of the ICCPR, which states: "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.”; and article 9(3) of the ICCPR, which states: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” Article 14(3) of the ICCPR further provides that: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”.

Regarding allegations of breaches of the presumption of innocence, I would like to refer your Excellency's Government to article 14(2) of the ICCPR, which states: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” According to the Human Rights Committee, “[I]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.” (General Comment No. 32, paragraph 30).

With respect to reported interference of members of the executive branch into the work of the Bangladesh International Crimes Tribunal, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, and in particular principle 1, which states: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”; and principle 2, which states: “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”

In connection with the appointment of judges to the Bangladesh International Crimes Tribunal by the Executive, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, and in particular principle 11, which states: “The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.”; and principle 12, which states: “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.” I would also like to recall General Comment No. 32 of the Human Rights Committee, where the Committee stated that: “A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.” (paragraph 19).

Regarding allegations of lack of individual independence and impartiality of the judges of the Bangladesh International Crimes Tribunal, I would like to refer your Excellency's Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular the following principles regarding the impartiality and integrity of judges:

- Principle 2.1, which states: "A judge shall perform his or her judicial duties without favour, bias or prejudice.";

- Principle 2.2, which states: "A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary."; and

- Principle 3.1, which states: "A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer."

With reference to concerns expressed regarding the impartiality and objectivity of the Chief Prosecutor of Bangladesh International Crimes Tribunal, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, 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 guideline 12, which states: "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."; and guideline 13, which states: "In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect."

With regard to the alleged prohibition of foreign counsel before the Bangladesh International Crimes Tribunal in contradiction with the Tribunal's own rules, I 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 19, which states: "No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles."

As regards information received on the above mentioned persons' access to legal counsel, I would like to refer your Excellency's Government to 14(3) of the ICCPR, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (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.”

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, in particular in principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”; principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”; principle 7, which states: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

With reference to allegations of lack of respect for the principle of equality of arms for the defence teams representing defendants before the Bangladesh International Crimes Tribunal, I would like to refer your Excellency’s Government to article 14(3) of the ICCPR, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; (e) 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.” According to the Human Rights Committee, “[T]he right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.” (General Comment No. 32, paragraph 13).

In its General Comment No. 32, the Human Rights Committee further indicated that: “Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary).” (para. 33). Principle 21 of the Basic Principles on the Role of Lawyers, also states: “It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”

Concerning the reported atmosphere of hostility and intimidation in which the defence teams have to operate, I would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, and in particular principle 16, which states: "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."; and principle 17, which states: "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."; and principle 18, which states: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

With respect to the allegation that the trial of Mr. Sayedee is proceeding in the absence of the defendant, I would like to refer your Excellency's Government to article 14(3) of the ICCPR, 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."

I therefore urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguards the rights to a fair trial and due process, of Messrs Delwar 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, in compliance with the above-mentioned international instruments.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am 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 legal basis for the arrest and detention of the above mentioned persons and indicate how such legal basis complies with the requirements of international human rights law, as enshrined in article 9 and 14 of the ICCPR.
3. 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 articles 9 and 14 of the ICCPR, as well as the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors,

4. Please provide detailed information on the measures taken to ensure that the Defense teams can perform their functions without intimidation, hindrance, harassment or improper interference, and with equal access and equality of arms, as provided for, among others, in article 14 of the ICCPR and the Basic Principles on the Role of Lawyers.

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

While waiting for your response, I urge your Excellency's Government to take all necessary measures 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. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers