

International Crimes Tribunal-2
Old High Court Building, Dhaka, Bangladesh

ICT-BD Case No. 02 of 2012

Chief Prosecutor Vs. Abdul Quader Molla (Accused)

Present

Mr. Justice A.T.M. Fazle Kabir, Chairman

Mr. Justice Obaidul Hassan, Member

Mr. Md. Shahinur Islam, (District Judge) Member

Order No.11

Dated 28.05.2012

Mr. Mohammad Ali

..... For the prosecution

Mr. Abdur Razzak

..... For the defence

Decision on Charge Framing Matter

Accused Abdul Quader Molla has been produced before this Tribunal today by the prison authority.

Today is fixed for passing decision on charge framing matter and as such the record is taken up for order. Before passing the order, we would like to provide a brief milieu and context of the case, its history, and the arguments put forward by both prosecution and defence before this Tribunal.

1. Introduction and Formation of the Tribunal

This International Crimes Tribunal (hereinafter referred to as the "Tribunal") was established under the International Crimes (Tribunals) Act enacted in 1973 (hereinafter referred to as the "Act") by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against humanity, war crimes, and crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25th March to 16th December 1971. However, no Tribunal was set up and as such no one could be brought to justice under the Act until the government established 'Tribunal' (Tribunal-1) on 25th of March 2010. It is to be

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noted that for ensuring expeditious trial, the government has set up this Tribunal (Tribunal-2) under section 6(1) of the Act on 22 March 2012.

2. Historical Context:

In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

In 1952 the Pakistani authorities attempted to impose 'Urdu' as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognized as a state language thus marking the beginning of language movement that eventually turned to the movement for greater autonomy and self-determination and eventually independence.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority, Pakistan Government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971, called on the people of Bangladesh to strive for independence if people's verdict is not respected. On 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

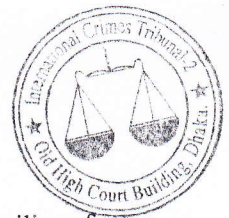
In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, *Biharis*, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million (thirty lac) people were killed, more than 2,00,000 (two lac) women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

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The Pakistan government and the military setup number of auxiliary forces such as the Razakars, the Al-Badar, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

3. Brief account of the Accused

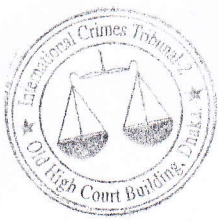
Accused Abdul Quader Molla was born in the village Amirabad under Police Station Sadarpur District- Faridpur in 1948. While he was a student of BSC in Rajendra College in 1966, he joined the student front known as 'Islami Chatra Sangha' and he held the position of president of the organization. While he was student of the Dhaka University, he became the president of Islami Chatra Sangha of Shahidullah Hall unit. In 1971, he organized the formation of Al-Badar Bahini with the students belonging to Islami Chatra Sangha which allegedly being in close association with the Pakistani army actively aided, abetted, facilitated and substantially contributed in committing horrific atrocities in 1971 in the territory of Bangladesh.

4. Procedural History

At pre-trial stage, the Chief Prosecutor submitted an application under Rule 9(1) of the Rules of Procedure seeking arrest of accused Abdul Quader Molla for the purpose of effective and proper investigation. At the time of hearing it was learnt that the accused was already in custody in connection with some other case. Thereafter, pursuant to the production warrant issued by the Tribunal (Tribunal-1) the accused was produced before the Tribunal (Tribunal-1) by the prison authority and then he was shown arrested as an accused before the Tribunal. Accordingly, since 02.10.2010 the accused Abdul Quader Molla has been in custody.

The Tribunal (Tribunal-1), since his detention, has entertained a number of applications seeking bail and the same were disposed of in accordance with law after hearing both the sides. The Tribunal also allowed the learned defence counsels to have privileged communication with the accused in custody.

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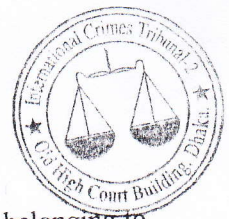
Finally, the Chief Prosecutor submitted the Formal Charge under section 9(1) of the Act on 18.12.2011, on the basis of the investigation report of the Investigating Agency, alleging that the accused as a member and a prominent organizer of the Al-Badar Bahini (i.e. auxiliary force) as well as a member of Islami Chatra Sangha or member of a group of individuals had committed crimes against humanity, genocide including abetting, aiding to commit such crimes in different places in Mirpur area of Dhaka city during the period of War of Liberation in 1971. The Tribunal (Tribunal-1) took cognizance of offences against the accused having found *prima facie* case in consideration of the documents together with the Formal Charge submitted by the prosecution. Prosecution was then directed to furnish copies of the Formal Charge and documents submitted there with which it intends to rely upon for supplying the same to the accused for preparation of defence.

The Tribunal-1, on application filed by the Chief Prosecutor ordered for transmission of the case record to this Tribunal-2 under section 11A (1) of the Act. This Tribunal, thereafter, received the case record on 23.04.2012. Earlier, the case was at stage of hearing the charge framing matter. Thus, this Tribunal had to hear the matter afresh as required under section 11A (2) of the Act. Accordingly, the hearing took place on 02 May, 07 May, 08 May, 09 May, 13 May, 14 May and 16 May 2012.

Before this Tribunal, in course of hearing the charge matter, the learned prosecutor Mr. Mohammad Ali made his submissions showing his argument favourable to framing charges against the accused, in the light of the Formal Charge together with the statement of witnesses and documents submitted therewith. While Mr. Abdur Razzak, the learned senior counsel appearing for the accused, refuting prosecution's submission, has extended his detailed submission both on factual and legal aspects and finally emphasized to allow the prayer to discharge the accused. Submissions advanced by both sides, on charge framing matter, may be summarized together with the views of the Tribunal on concerns raised, as below:

5. Submission advanced by the Prosecutor

The learned Prosecutor, before drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context that involved organizational



plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, auxiliary force took part in committing the offence and also substantially aided and abetted the Pakistani occupation force in committing horrific atrocities. It is thus submitted that commission of offence of crimes against humanity and genocide in 1971 War of Liberation of Bangladesh is an undeniable fact of common knowledge that deserves judicial notice. It was further submitted that the accused Abdul Quader Molla was personally and as atrocious member of Islami Chatra Sangha the fundamentalist pro-Pakistan Islamic activist group which was eventually merged to Al-Badar Bahini, the auxiliary force and also as a member of group of individuals involved in the mass killing and attack directed against civilian population constituting the offence of crimes against humanity and had substantial complicity in committing killing of members of group with intent to destroy it, either whole or in part. Those atrocities and unlawful acts fall within the purview of crimes against humanity, genocide and other inhuman acts mentioned in section 3(2) of the International Crimes (Tribunals) Act, 1973. It was also submitted that the statement of witnesses, documents and materials collected during investigation abundantly establish the allegations resulted from the commission of such unlawful acts and complicity of the accused in the crimes which have been narrated in the 'Formal Charge'. The Prosecutor submitted further that in framing charges not only the Formal Charge but the documents and statement of witnesses have to be considered together and disclosure revealed from such combined consideration patently indicate that there are sufficient grounds of presuming that the accused was criminally liable for the commission of offences as mentioned in section 3(2) of the Act.

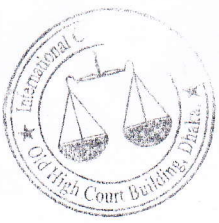
6. Submission advanced by the defence side

The learned counsel for the defence by filing an application seeking discharge of the accused submitted that the allegations set up in the Formal Charge do not disclose or state specificity of general particulars and the required elements to constitute the offences of crimes against humanity, genocide. The Formal Charge is based on vague and unspecified allegations and it does not disclose the mode of participation of the accused with the alleged unlawful acts. The learned counsel further submitted that the ICC Statute recognizes the need to define crimes with clarity, precision and specificity that many jurisdictions require for criminal prosecution. By referring international references the learned counsel continued to

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argue that the 'attack' must be 'widespread' or 'systematic' in relation to the required elements to constitute the offence of crimes against humanity. The Formal Charge does not disclose that the accused allegedly committed the offences as a member of Al-Badar Bahini. In relation to charges, incidents narrated in the Formal Charge, the learned counsel argued that the Formal Charge neither contains particulars of facts nor the particulars of crimes which is required under section 16(1) of the Act and this requirement is consistent with the ICC Statute (Rome Statute) and the ICCPR for ensuring due notice of the charge enabling the accused to understand and defend him properly.

On legal aspects, the learned Senior Counsel appearing for the accused further submitted that after enacting the International Crimes (Tribunals) Act 1973 there had been a tripartite agreement executed in 1974 on the strength of which 195 Pakistani war criminals (member of armed forces) were shown clemency despite the fact that they were the principal perpetrators of atrocities committed in 1971 in the territory of Bangladesh and as such without bringing them to the process of justice the present accused cannot be prosecuted.

It was further argued that apart from the Act of 1973 there had been the Collaborators Order 1972 meant to prosecute and try the local persons who allegedly collaborated the Pakistani Army in committing atrocities. But the accused was not prosecuted under the Collaborators Order 1972. Thus, it may be validly said that the 1973 Act was enacted only to prosecute those 195 Pakistani armed force members. It was further argued that the amendment brought in the Act in 2009 by inserting the words 'individual' or 'group of individuals' qualifying a person who did not belong to any 'auxiliary force' does not have any retrospective effect and as such the accused now cannot be prosecuted even as an 'individual'. Prosecution is politically motivated. Delay of long 40 years in bringing prosecution against the accused remains unexplained and there is nothing to show that the accused was listed in any manner as a perpetrator of atrocities committed in 1971, before constituting the Tribunal in 2010.

7. Reply of the Prosecutor

In reply to the factual aspects agitated by the defence, the learned Prosecutor Mr. Mohammad Ali submitted that the statement of witnesses and documents submitted sufficiently speak of the fact that accused Abdul Qauder Molla was associated with Islami Chatra Sangha and the members belonging to it



were Al-Badars. He further submitted, on legal aspects that since 'abetting' or 'aiding' is a distinct offence under the Act the accused even as an 'abettor' or 'aider' only can be prosecuted. The Act does not bar to prosecute the person committing the offence of abetting or aiding the commission of any offence mentioned in section 3(2) of the Act. In reply to argument on amendment through which the words 'individual' or 'group of individuals' have been inserted in section 3(1) of the Act the learned prosecutor submitted that the intent of the Act and section 3(1) is to be perceived as a whole in interpreting whether such subsequent amendment is 'retrospective' or 'prospective'. The tripartite agreement providing immunity to 195 Pakistani war criminals was an 'executive act' which does not expel or derogate the state obligation to prosecute the local perpetrators of atrocities committed in 1971.

The Act does not prescribe provision of submitting any proposed charge. The object of submitting the Formal Charge is to assist the Tribunal and the same cannot be the sole basis of framing of any charge or charges. According to Rule 37, on perusal of the Formal Charge and statements of the witnesses and the documents submitted therewith, if the Tribunal finds that there are sufficient grounds to presume that the accused has committed an offence, only then the charges will be framed otherwise the accused shall be discharged. Therefore, it is not correct to say that the Tribunal is to peruse and depend the Formal Charge only for resolving the matter of framing charges.

8. Discussion and Decision

Before deciding the matter we consider it expedient to address some of the legal issues upon which the learned counsel for the defence drew our notice. Succinctly, the defence raised the issue of inadequacy of the definition of crimes, the absence of elements of crimes like in ICC's Statute, the thresholds of the crimes against humanity, intent of enacting the Act of 1973, legality of prosecuting the accused questioning the amendment of section 3(1) of the Act brought in 2009.

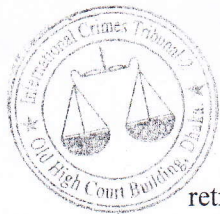
(i). Amendment of the Act in 2009 retrospective: Can accused be prosecuted as 'individual'?

It is submitted by the learned senior counsel appearing on behalf of the accused that there is nothing to show that the accused belonged to any 'auxiliary force' and as such he cannot be prosecuted under the Act of 1973 which is

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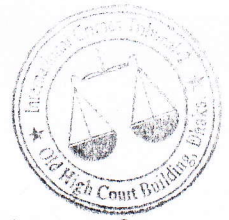


retrospective one. It is further submitted that the subsequent amendment brought in 2009 to section 3(1) of the Act of 1973 by bringing the words 'individual;' or 'group of individuals' does not have retrospective effect and as such the present accused cannot be prosecuted in the capacity of an 'individual' or member of 'group of individuals' for the offences underlying in the Act. Since such amendment has not been expressly given retrospective effect interpretation stands that the amendment is prospective.

Firstly, on our query, the learned counsel for the defence rather admitted that prosecution can be initiated under the main Statute enacted in 1973 which is retrospective. Secondly, it is settled that prosecuting internationally recognized crimes even under retrospective legislation is permitted. It is to be noted that the ICTY, ICTR SCSL the judicial bodies backed by the UN have been constituted under their respective retrospective Statutes. Only the ICC is founded on prospective Statute.

We are to perceive the intent of enacting the main Statute together with fortitude of section 3(1). It is to be further reiterated that Article 47(3) of the Constitution provides protection to the Act meant to prosecute the perpetrators of atrocities committed in 1971 War of Liberation. The legislative change that has been adopted by bringing amendment in 2009 has merely extended jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts even in the capacity of an 'individual' or member of 'group of individuals'. The rationale behind this amendment is to avoid letting those who committed the most heinous atrocities go unpunished. This is the intent of bringing such amendment.

It may be further mentioned here that the words 'individual' or 'group of individuals' have been incorporated both in section 3(1) of the Act of 1973 and in Article 47(3) of the Constitution by way of amendments in 2009 and 2011 respectively. The right to move the Supreme Court for calling any law relating to international crimes in question by the persons charged with crimes against humanity and genocide, has been taken away by the provision of Article 47A(2) of the Constitution. Since the accused has been prosecuted for offences recognized as international crimes as mentioned in the Act of 1973 the accused does not have right to call in question any provision of the International Crimes (Tribunals) Act 1973 or any of amended provisions thereto. Thus, we hold that the application of



prospectiveness or retroactivity as to amendment to section 3(1) of the Act of 1973 raised by the accused is immaterial to him in consideration of his legal status and accordingly, the defence objection is not sustainable in law, particularly in the light of Article 47(3) and Article 47A of the Constitution.

(ii) Tripartite Agreement and immunity to 195 Pakistani war criminals

It is not acceptable to say that no individual or member of auxiliary force as stated in section 3(1) of the Act of 1973 can be brought to justice under the Act for the offences enumerated therein merely for the reason that 195 Pakistani war criminals belonging to Pak armed force were allowed to shirk justice on the strength of the tripartite agreement. Such agreement indeed was an 'executive act' that cannot provide any premium to other perpetrators committing offences in breach of customary international law for the reason of forgiveness or immunity shown to those 195 war criminals. An 'executive act, can never derogate the *jus cogens* norms and the existing law i.e the Act of 1973 enacted to prosecute those offences.

As state party of UDHR and Geneva Convention Bangladesh cannot evade obligation to ensure and provide justice to victims of those offences and their relatives who still suffer the pains sustained by the victims and as such an 'executive act' (tripartite agreement) can no way derogate this internationally recognized obligation. This norm and obligation are highest in international law, which permits no derogation from them. Besides, any agreement or treaty, if seems to be conflicting and derogatory to *jus cogens* (compelling laws) norms is invalid and does not create any clog to internationally recognized state obligation. Next, the Act of 1973 is meant to prosecute and punish the perpetrators of offences enumerated therein who belonged to armed forces, auxiliary forces, or who committed the offence as an individual or member of group of individuals and nowhere the Act says that without prosecuting the armed forces (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. It is clear from the section 3(1) of the Act of 1973 that even any person (individual or member of group of individuals), if he is *prima facie* found individually criminally responsible for the offences, can be brought to justice under the Act of 1973. The argument that since the main responsible persons (Pakistan Army) have escaped the trial, on the strength of the tripartite agreement providing immunity to them, the next line collaborators cannot be tried is far-off to any canons of criminal jurisprudence. Therefore, we are of the view

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that the tripartite agreement is not at all a barrier to prosecute civilian perpetrator under the Act of 1973.

(iii) Prosecuting abettor and aider

Mr. Abdur Razzak, the learned senior counsel appearing for the accused emphatically argued that only the abettor cannot be prosecuted and tried leaving the principal offender aside and there is no example to prosecute and try only the abettor and as such it is not at all justifiable and permissible in law to prosecute the accused merely for the charge of abetting and aiding the principal offender.

Mr. Mohammad Ali, the learned prosecutor submitted that in the Act of 1973 'abetting', 'aiding', 'conspiracy' to commit crimes enumerated in section 3(2)(a)(c) are distinct offences and the persons responsible for any of these unlawful acts can be prosecuted.

First, let us have a look to the case of Charles Taylor (SCSL). On 26 April 2012, a Trial Chamber of the Special Court for Sierra Leone (SCSL), with Justice Richard Lussick presiding, convicted former Liberian President Charles Taylor for '**aiding and abetting**' war crimes and crimes against humanity. Charles Taylor was indicted by the Prosecutor in 2003 when he was a sitting president and Head of State of Liberia. He was not prosecuted and tried together with any other offender or principal perpetrator. He was however acquitted of ordering the commission of the crimes – a more serious mode of participation than aiding and abetting. Taylor was also acquitted of superior/command responsibility and joint criminal enterprise (JCE). Therefore, we find that in law, either 'aiding' or 'abetting' alone is ample to render the perpetrator criminally liable.

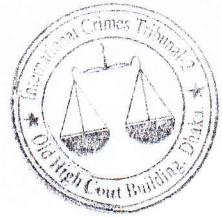
The Act of 1973 has enumerated abetting and aiding as distinct offence and punishable there under. From the jurisprudence evolved in the ICTR and SCSL it is now settled that even only the abettor and aider to perpetration of crimes underlying in the statutes can be prosecuted. The above international references also consistently supplement our own view that 'abetting' or 'aiding' or 'conspiracy' being distinct offence in the Act of 1973 the persons responsible for any of these unlawful acts that substantially facilitated the commission of offence enumerated in section 3(2)(a)(c) can lawfully be brought to justice.

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(iv) The Collaborators Order 1972

The Collaborators Order 1972 was a different legislation aiming to prosecute the persons responsible for the offences enumerated in the schedule thereof. It will appear that the offences punishable under the Penal Code were scheduled in the Collaborators Order 1972. While the 1973 Act was enacted to prosecute and try the crimes against humanity, genocide and other system crimes committed in violation of customary international law. There is no scope to characterize the offences underlying in the Collaborators Order 1972 to be the same offences as specified in the Act of 1973. In the case in hand, we have found that there are sufficient grounds to presume *prima facie* that the accused was associated with the perpetration of the offences enumerated in the 1973 Act.

Therefore, we are disinclined to accept the argument that merely for the reason that since the accused was not brought to justice under the Collaborators Order 1972 now he is immune from being prosecuted under the Act of 1973.

(v) Delay in bringing prosecution

Criminal prosecutions are always open and not barred by time limitation. Still the Nazi war criminals of the Second World War are being prosecuted. Trials of genocides committed during the 1975 Chilean revolution and the Pol Pot regime of Cambodia in the 1970s are now ongoing. It is to be noted that internationally recognised crimes were committed in Cambodia during 1975-1978 but its government waited for 25 years for attaining favourable situation in prosecuting the perpetrators till 2003. The sovereign immunity of Slobodan Milosevic of Serbia, Charles Taylor of Liberia, and Augusta Pinochet of Chile (with the Chilean Senate's life-long immunity) as the head of state could not protect them from being detained and prosecuted for committing genocides, crimes against humanity, and war crimes, even after a long delay.

It is however experienced that a prompt and indisputable justice process cannot be motorized solely by the painful memories and aspirations of the victims. It requires strong public and political will together with favourable and stable political situation. Mere state inaction, for whatever reasons, does not render the delayed prosecution barred by any law. At this stage, we are just inclined to examine whether there have been sufficient reasons to presume that the accused had committed the offence(s) under the Act.

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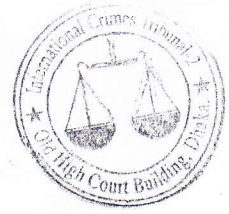
(vi) Offences: Whether Well Characterized

It is emphatically submitted that the offences enumerated in the Act are not well defined and as such it will cause prejudice the accused in preparing its own defence. The Rome Statute embodies elements required to constitute crimes underlying in the Statute. On the basis of flawed definition of crimes lawful prosecution cannot be initiated. The learned Counsel also drew our attention to the Statute of ICC (Rome Statute).

It is to be noted that looking at the contemporary standards of definition of 'Crimes against Humanity' in various Statutes, this observation can be made that there is no 'consistency' among definitions. The definition of 'Crimes against humanity' as contemplated in Article 5 of the ICTY Statute 1993 neither requires the presence of 'Widespread and Systematic Attack' nor the presence of 'knowledge' thereto as conditions for establishing the liability for 'Crimes against Humanity'. True, the Rome Statute definition differs from that of both ICTY and ICTR Statutes.

But, the Rome Statute says, the definition etc. contained in the Statute is 'for the purpose of the Statute'. So, use of the phrase "**for the purpose of the Statute**" in **Article 10 of the Rome Statute** means that the drafters were not only aware of, but recognized that these definitions were not the final and definitive interpretations, and that there are others. In establishing the 'Crimes against Humanity' in the Sierra Leon Court, there is no need to prove that the relevant crimes were committed with the knowledge of attack. We see that there is no actual consistency in the definition of 'Crimes against Humanity' as per the ICTY Statute, the ICTR Statute, the Rome Statute and the Sierra Leone Statute.

The section 3(2)(a) of the Act states the '**attack**' to constitute the offences of crimes against humanity is required to have been directed against '**any civilian population**' or '**persecution on political, racial, ethnic or religious grounds**'. Similarly, genocide requires, as stated in section 3(2)(c) of the Act, that the unlawful acts to constitute the offence of genocide are to be committed '**with intent to destroy**', '**in whole or in part**', a '**national, ethnic, racial, religious or political group**'. Therefore, the claim as to the non-existence of a consistent international standard for the definition of 'Crimes against Humanity' in the 1973 Act is baseless. However, in this regard, the Tribunal shall not be precluded to



borrow guidance from international references, if it is so required, at the stage of trial.

Concluding View

In view of discussion as made above and considering the submissions advanced by both sides we come to decision that the application seeking discharge of the accused, having no merit, is hereby rejected.

We have perused the Formal Charge, statement of witnesses along with other documents submitted by the prosecution. We are of the view that there are sufficient materials before this Tribunal to presume that accused Abdul Quader Molla has committed offences specified under section 3(2) of the Act. Since we find that there are *prima facie* allegations against the accused, the charges are thus framed against him in the following manner.

Charges

We,

Justice A.T.M Fazle Kabir, Chairman
Justice Obaidul Hassan, Member and
Judge Md. Shahinur Islam, Member
of the International Crimes Tribunal -2

hereby charge you, accused Abdul Quader Molla son of late Sanaullah Molla of village Amirabad Police Station Sadarpur District-Faridpur at present Flat No. 8/A, Green Valley Apartment, 493, Boro Moghbazar PS. Ramna, Dhaka as follows:-

Charge 01

that during the period of War of Liberation in 1971, one Pallab, student of Bangla College was one of the organizers of War of Liberation. For such reason anti-liberation people, in order to execute their plan and to eliminate the freedom loving people, went to Nababpur from where they apprehended Pallab and forcibly brought him to you at Mirpur section 12 and then on your order, your accomplices dragged Pallab there from to Shah Ali *Majar* at section 1 and he was then dragged again to *Idgah* ground at section 12 where he was kept hanging with a tree and on 05 April 1971, on your order, your notorious accomplice Akhter, Al-Badar, killed him by gunshot and his dead body was buried, by the side of 'Kalapani Jheel' along with dead bodies of 07 others.

Signature of Justice A.T.M. Fazle Kabir
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 Justice A.T.M. Fazle Kabir, Chairman
 International Crimes Tribunal, Dhaka

Therefore, you accused Abdul Quader Molla, in the capacity of one of prominent leaders of Islami Chatra Sangha as well as significant member of Al-Badar or member of group of individuals are being charged for participating and substantially facilitating and contributing to the commission of the above criminal acts , in concert with Al-Badar members, causing murder of Pallab, a non-combatant civilian which is an offence of murder as crime against humanity and for complicity to commit such crime as specified in section 3(2)(a)(h) of the International Crimes(Tribunals) Act,1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge 02

that during the period of War of Liberation, on 27 March 1971, at any time, you, one of leaders of Islami Chatra Sangha as well as a prominent member of Al-Badar or member of group of individuals, being accompanied by your accomplices, with common intention, brutally murdered the pro-liberation poet Meherun Nesa , her mother and two brothers when they had been in their house located at section 6, Mirpur, Dhaka. One of survived inmates named Seraj became mentally imbalanced on witnessing the horrific incident of those murders. The allegation, as transpired, indicates that you actively participated and substantially facilitated and contributed to the attack upon unarmed poet Meherun Nesa, her mother and two brothers causing commission of their brutal murder.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha and as well as prominent member of Al-Badar or member of group of individuals are being charged for participating and substantially facilitating and contributing to the commission of the above criminal acts causing murder of civilians which is an offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes(Tribunals) Act,1973 which are punishable under section 20(2) read with section 3(1) of the Act.

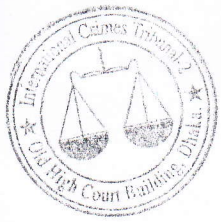
Charge 3

that during the period of War of Liberation, on 29.3.1971 in between 04:00 to 04:30 evening, victim Khondoker Abu Taleb was coming from Arambag to see the condition of his house located at section-10, Block-B, Road-2, Plot-13, Mirpur, Dhaka but he found it burnt into ashes and then on the way of his return to Arambag he arrived at Mirpur-10 Bus Stoppage wherefrom you, one of leaders of

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Islami Chatra Sangha as well as potential member of Al-Badar, being accompanied by other members of Al-Badars, Razakars, accomplices and non-Bengaleese apprehended him, tied him up by a rope and brought him to the place known as 'Mirpur Jallad Khana Pump House' and slaughtered him to death. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated and substantially contributed to the execution of the attack upon the victim, an unarmed civilian, causing commission of his horrific murder.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as potential member of Al-Badar or member of group of individuals are being charged for participating, facilitating and substantially contributing to the commission of the above criminal acts causing murder of a civilian which is an offence of 'murder as crime against humanity' and for 'complicity to commit such crime' as specified in section 3(2)(a)(h) of the International Crimes(Tribunals) Act,1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge 4

that during the period of War of Liberation ,on 25.11.1971 at about 07:30 am to 11:00 am you along with your 60-70 accomplices belonging to Rajaker Bahini went to the village Khanbari and Ghotar Char (Shaheed Nagar) under police station Keraniganj, Dhaka and in concert with your accomplices, in execution of your plan, raided the house of Mozaffar Ahmed Khan and apprehended two unarmed freedom fighters named Osman Gani and Golam Mostafa there from and thereafter, they were brutally murdered by charging bayonet in broad-day light.

Thereafter, you along with your accomplices attacking two villages known as Bhawal Khan Bari and Ghotar Char (Shaheed Nagar), as part of systematic attack, opened indiscriminate gun firing causing death of hundreds of unarmed villagers including (1) Mozammel Haque(2) Nabi Hossain Bulu(3) Nasir Uddin (4) Aswini Mondol (5) Brindabon Mondol (6) Hari Nanda Mondol(7) Reantosh Mondol zuddin (8) Habibur Rahman (9) Abdur Rashid(10) Miaz Uddin (11) Dhoni Matbor (12) Brindabon Mridha (13) Sontosh Mondol(14) Bitambor Mondol (15) Nilambor Mondor (16) Laxzman Mistri (17) Surja Kamar (18) Amar Chand(19) GuruDas (20) Panchananon Nanda (21) Giribala (22) Maran Dasi (23) Darbesh Ali and (24) Aroj Ali . The allegation, as transpired, sufficiently

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indicates that you actively participated, facilitated, aided and substantially contributed to cause murder of two unarmed freedom fighters and the attack was directed upon the unarmed civilians, causing commission of their horrific murder.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding and substantially facilitating the co-perpetrators in launching the planned attack directing the non-combatant civilians that resulted to large scale killing of hundreds of civilians including 24 persons named above and also to cause brutal murder of two freedom fighters and as such you have committed the offence of 'murder as crime against humanity', 'aiding and abetting the commission of murder as crime against humanity' and also for 'complicity in committing such offence' as mentioned in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act,1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge 5

that during the period of War of Liberation ,on 24.4.1971 at about 04:30 am, the members of Pakistani armed forces landing from helicopter moved to the western side of village Alubdi near Turag river and about 50 non-Bengaleese, Rajakers and members of Pakistani armed force under your leadership and guidance also came forward from the eastern side of the village and then you all, with common intention and in execution of plan, collectively raided the village Alubdi (Pallabi, Mirpur) and suddenly launched the attack on civilians and unarmed village dwellers and opened indiscriminate gun firing that caused mass killing of 344 civilians including (1) Basu Mia son of late Jonab Ali(2) Zahirul Molla (3) Jerat Ali (4) Fuad Ali (5) Sukur Mia (6) Awal Molla son of late salim Molla (7) Sole Molla son of late Digaj Molla (8) Rustam Ali Bepari (9) Karim Molla (10) Joinal Molla (11) Kashem Molla (12) Badar uddin (13) Bisu Molla (14) Ajal Haque (15) Fajal Haque(16) Rahman Bepari (17) Nabi Molla (18) - Alamat Mia (19) Moklesur rahman (20) Fulchan (21) Nawab Mia (22) Yasin Vanu (23) Lalu Chan Bepari (24) Sunu Mia constituting the offence of their murder. The allegation, as transpired, sufficiently indicates that you actively participated, facilitated, aided and substantially contributed to the attack directed upon the unarmed civilians, causing commission of the mass murder.

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Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding the Pak army and co-perpetrators in launching the attack that substantially contributed to the execution of the planned attack directing the hundreds of non-combatant civilians that resulted to their death and as such you have committed the offence of 'murder as crime against humanity', 'aiding and abetting' to the commission of such offences' and also for 'complicity in committing such offence' as mentioned in section 3(2)(a)(g)(h) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Charge 6

that during the period of War of Liberation, on 26.3.1971 at about 06:00 pm you being accompanied by some *biharis* and Pakistani army went to the house being house number 21, Kalapani Lane No. 5 at Mirpur Section-12 belonging to one Hajrat Ali and entering inside the house forcibly, with intent to kill Bangalee civilians, your accomplices under your leadership and on your order killed Hazrat Ali by gun fire, his wife Amina was gunned down and then slaughtered to death, their two minor daughters named Khatija and Tahmina were also slaughtered to death, their son Babu aged 02 years was also killed by dashing him to the ground violently. During the same transaction of the attack your 12 accomplices committed gang rape upon a minor Amela aged 11 years but another minor daughter Momena who somehow managed to hide herself in the crime room, on seeing the atrocious acts, eventually escaped herself from the clutches of the perpetrators. The atrocious allegation, as transpired, sufficiently indicates that you actively participated, facilitated, aided and substantially contributed to the attack directed upon the unarmed civilians, causing commission of the horrific murders and rape.

Therefore, you, in the capacity of one of leaders of Islami Chatra Sangha as well as prominent member of Al-Badar or member of group of individuals are being charged for accompanying the perpetrators to the crime scene and also aiding, abetting, ordering the accomplices in launching the planned attack directing the non-combatant civilians that substantially contributed to the commission of offence of 'murder as crime against humanity', 'rape as crime against humanity', 'aiding and abetting the commission of such crimes' and also

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for 'complicity in committing such offences' as mentioned in section 3(2)(a)(g)(h) of the International Crimes(Tribunals) Act,1973 which are punishable under section 20(2) read with section 3(1) of the Act.

Thus, the above charges sufficiently indicate that you have committed the offences under section 3(2)(a)(g) and (h) which are punishable under section 20(2) read with section 3(1) of the Act.

The aforesaid charges of crimes against humanity, abetting and aiding to commit such crimes and also complicity to the commission of such crimes described under section 3(2)(a)(g) and (h) of the Act are punishable under the provisions of section 20(2) read with section 3(1) of the Act which are within the cognizance and jurisdiction of this Tribunal. And we hereby direct you to be tried by this Tribunal on the said charges. You have heard and understood the aforesaid charges.

Question: Do you plead guilty or not.

Answer: *আমি দোষী নই।*

The charges have been read over and explained to the accused who pleaded not guilty and claimed to be tried.

Let **20.6.2012** be fixed for 'opening statement' and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The defence counsel is directed to submit a list of witnesses along with documents which the defence intends to rely upon, as required under section 9(5) of the Act, to the Tribunal by the date fixed.

Justice A.T.M Fazle Kabir, Chairman

Justice Obaidul Hassan, Member

Judge Md. Shahinur Islam, Member

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