

**International Crimes Tribunal-2 (ICT-2)**  
**[Tribunal constituted under section 6 (1) of the Act No. XIX of 1973]**

**Old High Court Building, Dhaka, Bangladesh**

**ICT-BD Case No. 02 of 2012**

**[Charges: crimes against Humanity and aiding & complicity to commit such crimes as specified in section 3(2)(a)(g)(h) of the Act No. XIX of 1973]**

**The Chief Prosecutor**  
**Vs.**  
**Abdul Quader Molla**

**Before**

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Judge Md. Shahinur Islam, Member**

**For the Prosecution:**

Mr. Golam Arief Tipoo, Chief Prosecutor

Mr. Mohammad Ali, Prosecutor

**For the Accused :**

Mr. Abdur Razzak, Senior Advocate, Bangladesh Supreme Court

Mr. Ekramul Haque, Advocate, Bangladesh Supreme Court

Mr. Abdus Sobhan Tarafder, Advocate, Bangladesh Supreme Court

Mr. Tajul Islam, Advocate, Bangladesh Supreme Court

Mr. Farid Uddin Khan, Advocate, Bangladesh Supreme Court

Mr. Sajjad Ali Chowdhury, Advocate

**Date of delivery of Judgment: 05 February, 2013**

**SUMMARY OF FULL TEXT OF JUDGEMENT**

**[Under section 20(1) of the Act XIX of 1973]**

**I. Opening words**

1. This Tribunal (ICT-2), a lawfully constituted domestic judicial forum, after dealing with the matter of prosecution and trial of internationally recognized crimes i.e. crimes against humanity perpetrated in 1971 in the territory of Bangladesh, during the War of Liberation is going to deliver its unanimous verdict in a case after holding trial in presence of the person accused of crimes alleged. From this point of view, delivering verdict in this case by the Tribunal-2 (ICT-2) is indeed a significant

occasion. At all stages of proceedings the prosecution and the defence have made admirable hard work in advancing their valued arguments on academic and legal aspects including citations of the evolved jurisprudence. It predictably has stimulated us to address the legal issues intimately involved in the case, together with the factual aspects as well. We take the privilege to appreciate and value their significant venture.

In delivering the verdict we have deemed it indispensable in highlighting some issues, in addition to legal and factual aspects, relating to historical and contextual background, characterization of crimes, commencement of proceedings, procedural history reflecting the entire proceedings, charges framed, in brief, and the laws applicable to the case for the purpose of determining culpability of the accused. Next, together with the factual aspects we have made endeavor to address the legal issues involved and then discussed and evaluated evidence adduced in relation to charges independently.

Now, having regard to section 10(1) (j), section 20(1) and section 20(2) of the International Crimes (Tribunals) Act, 1973[Act No. XIX of 1973] this 'Tribunal' known as International Crimes Tribunal-2 (ICT-2) hereby renders and pronouncing the following unanimous judgment.

## **II. Commencement of proceedings**

1. On 18 December 2011, the Prosecution filed the 'formal charge' in the form of petition as required under section 9(1) of the Act of 1973 against accused Abdul Quader Molla. After providing due opportunity of preparation to accused, the Tribunal, under Rule 29(1) of the Rules of Procedure [hereinafter referred to as 'ROP'], took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973.
2. The Tribunal after hearing both sides and on perusal of the formal charge, documents and statement of witnesses framed six charges relating to the commission of 'crimes against humanity' as specified in section 3(2)(a) of the Act of 1973 or in the alternative for 'complicity in committing such crimes' as specified in section 3(2)(a)((g)(h) of the said Act . The charges so framed were read out and explained to

the accused Abdul Qauder Molla in open court when he pleaded not guilty and claimed to be tried and thus the trial started.

### III. Introductory Words

3. International Crimes (Tribunals) Act, 1973 (the Act XIX of 1973)[**hereinafter referred to as 'the Act of 1973'**] is an *ex-post facto* domestic legislation enacted in 1973 and after significant updating the ICTA 1973 through amendment in 2009, the present government has constituted the Tribunal ( 1<sup>st</sup> Tribunal) on 25 March 2010 . The 2<sup>nd</sup> Tribunal has been set up on 22 March 2012. The degree of fairness as has been contemplated in the Act and the Rules of Procedure (ROP) formulated by the Tribunals under the powers conferred in section 22 of the principal Act are to be assessed with reference to the national wishes such as, the long denial of justice to the victims of the atrocities committed during 1971 independence war and the nation as a whole.

4. Bangladesh Government is a signatory to and has ratified the ICCPR (International Covenant for Civil and Political Rights), along with its Optional Protocol. It is necessary to state that the provisions of the ICTA 1973 [(International Crimes (Tribunals) Act, 1973)] and the Rules framed there under offer adequate compatibility with the rights of the accused enshrined under Article 14 of the ICCPR. The 1973 Act of Bangladesh has the merit and mechanism of ensuring the standard of safeguards recognised universally to be provided to the person accused of crimes against humanity.

### IV. Jurisdiction of the Tribunal

5. The Act of 1973 is meant to prosecute, try and punish not only the armed forces but also the perpetrators who belonged to '**auxiliary forces**', or who committed the offence as an '**individual**' or a '**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 of 1973 cannot be prosecuted. Thus, the Tribunal set up under the Act of 1973 are absolutely domestic Tribunal but meant to try internationally recognised crimes committed in violation of customary international law during the war of liberation in 1971 in the territory of Bangladesh. Merely for the reason that the Tribunal is preceded by the word "international" and

possessed jurisdiction over crimes such as Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes, it will be wrong to assume that the Tribunal must be treated as an "International Tribunal"

## V. Brief Historical Background

6. Atrocious and dreadful crimes were committed during the nine-month-long war of liberation in 1971, which resulted in the birth of Bangladesh, an independent state. Some three million people were killed, nearly quarter million women were raped and over 10 million people were forced to take refuge in India to escape brutal persecution at home, during the nine-month battle and struggle of Bangalee nation. The perpetrators of the crimes could not be brought to book, and this left an unfathomable abrasion on the country's political awareness and the whole nation.

7. The undisputed history goes on to portray that in the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. But defying the democratic norms Pakistan Government did not care to respect this overwhelming majority. As a result, movement started in the territory of this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7<sup>th</sup> March, 1971, called on the Bangalee nation to struggle for independence if people's verdict is not respected. In the early hour of 26<sup>th</sup> March, following the onslaught of "**Operation Search Light**" by the Pakistani Military on 25<sup>th</sup> March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

8. 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, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS), Muslim League, Pakistan Democratic Party(PDP) Council Muslim League, Nejam E Islami joined and/or collaborated with the Pakistan occupation army to aggressively resist the conception of independent Bangladesh and most of them committed and facilitated the commission of atrocities in violation of customary international law in the territory of Bangladesh. "**The workers belonging to purely Islami Chatra Sangha were**

called Al-Badar, the general patriotic public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami etc were called Al-Shams and the Urdu-speaking generally known as Bihari were called al-Mujahid.”

[Source: ‘Sunset at Midday’(Exhibit-2 written by Mohi Uddin Chowdhury, Qirtas Publications, Karachi, Pakistan, 1998]

9. Jamat E Islami (JEI) and some other pro-Pakistan political organizations substantially contributed in creating these para-militias forces (auxiliary force) for combating the unarmed Bangalee civilians, in the name of protecting Pakistan. Fox Butterfield wrote in the New York Times- January 3, 1972 that “Al Badar is believed to have been the action section of Jamat-e-Islami, carefully organised after the Pakistani crackdown last March” [Source: Bangladesh Documents Vol. II page 577, Ministry of External Affairs, New Delhi]. Incontrovertibly the way to self-determination for the Bangalee nation was strenuous, swabbed with immense blood, strives and sacrifices. In the present-day world history, conceivably no nation paid as extremely as the Bangalee nation did for its self-determination.

10. We have found from a report published in The Economist that “Bangladesh, formerly East Pakistan, became independent in December 1971 after a nine-month war against West Pakistan. The West's army had the support of many of East Pakistan's Islamist parties. They included Jamaat-e-Islami, still Bangladesh's largest Islamist party, which has a student wing that manned a pro-army paramilitary body, called Al Badr.”

[Source: The Economist : Jul 1st 2010:

<http://www.economist.com/node/1648551?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e>]

11. Despite the above historic truth as to antagonistic and atrocious role of JEI and other pro-Pakistan political organizations section 3(1) of the Act of 1973 remains silent as regards responsibility of any ‘organisation’ for the atrocities committed in the territory of Bangladesh in 1971 war of liberation.

## VI. Brief account of the accused

12. 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

(Bachelor of Science) in Rajendra College, Faridpur in 1966, he joined the student wing of JEI known as 'Islami Chatra Sangha' (ICS) 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, according to the prosecution, he organized the formation of Al-Badar Bahini with the students belonging to Islami Chatra Sangha (ICS) and allegedly being in close alliance with the Pakistani occupation army and Jamat E Islami actively aided, abetted, facilitated and substantially assisted, contributed and provided moral support and encouragement in committing appalling atrocities in 1971 in the territory of Bangladesh.

## VII. Procedural History

13. At pre-trial stage, the Chief Prosecutor submitted an application before the ICT-1 under Rule 9(1) of the Rules of Procedure seeking arrest of the 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.

14. Finally, the Chief Prosecutor submitted the Formal Charge under section 9(1) of the Act on 18.12.2011. 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. At this stage, 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 of 1973. Tribunal (ICT-2),

finally, framed six charges by its order dated 28 May 2012. Prosecution, during trial, adduced and examined as many as 12 witnesses including the Investigation Officers. On the other hand, defence examined in all 06 witnesses including the accused himself.

15. Eventually, prosecution's summing up of case under section 10(1)(i) of the Act of 1973 was heard for 09 and half hours while the defence placed summing up of its own case by taking about 25 hours.

### **VIII. Applicable laws**

16. The proceedings before the Tribunal shall be guided by the International Crimes (Tribunals) Act 1973, the Rules of Procedure 2012 formulated by the Tribunal under the powers given in section 22 of the Act. Section 23 of the Act of 1973 prohibits the applicability of the Code of Criminal Procedure, 1898 and the Evidence Act 1872. Tribunal is authorized to take judicial notice of fact of common knowledge which is not needed to be proved by adducing evidence [**Section 19(4) of the Act**]. The Tribunal may admit any evidence [**Section 19(1) of the Act**]. The Tribunal shall have discretion to consider hearsay evidence too by weighing its probative value [**Rule 56(2)**]. The defence shall have liberty to cross-examine prosecution witness on his credibility and to take contradiction of the evidence given by him [**Rule 53(ii)**]. Cross-examination is significant in confronting evidence.

17. The Tribunal may receive in evidence statement of witness recorded by Magistrate or Investigation Officer only when the witness who has subsequently died or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable [**Section 19(2) of the Act**]. But in the case in hand no such statement of witness has been received. The defence duly cross-examined all the prosecution witnesses.

### **IX. The Universally Recognised Rights of Accused Ensured by the Act of 1973**

18. Fairness is the idea of doing what's best. It may not be perfect, but it's the good and decent thing to do. It requires being level-headed, uniform and regular. It is

necessary to state that the provisions of the Act of 1973 [(International Crimes (Tribunals) Act,1973)] and the Rules(ROP) framed there under offer adequate compatibility with the rights of the accused enshrined under Article 14 of the ICCPR. In trying the offences under the general law, the court of law in our country does not rely on our own standards only, it considers settled and recognised jurisprudence from around the world.

19. The ICT-2 guarantees the required procedural protections of the defendant's right to fair trial both in pre-trial phase and during trial. The Act of 1973 and the Rules(ROP) framed there under explicitly compatible with the fair trial concept contained in the ICCPR. The 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 compassionate, jurisprudentially significance and legally valid.

20: The Tribunal-2, 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 been not a single instance that any of accused person has been denied any of his right to have time necessary for preparation of his defense or interest.

#### **X. Universally Recognised Rights of Victims**

21. The Tribunal notes that without fixing attention only to the rights of defence responsiveness also to be provided to the rights of victims of crimes as well. The victims of atrocities committed in 1971 within the territory of Bangladesh in violation of customary international law need justice to heal. Bangladesh considers that the right to remedy should also belong to victims of war crimes. The State has an obligation to remedy serious human rights violations. Bangladesh recognizes Article 8 of the Universal Declaration of Human Rights and Article 2(3) of the International Covenant of Civil and Political Rights which ensure the right to an effective remedy for the violation of human rights.



## **XI. The way of adjudicating the charges**

22. Despite the indisputable atrociousness of the crimes committed during the war of liberation in 1971 in collaboration with the local perpetrators, we require to examine the facts constituting offences alleged and complicity of the accused therewith in a most dispassionate manner, keeping in mind that the accused is presumed innocent. In this regard the Tribunal (ICT-2) recalls the provisions contained in section 6(2A) of the Act of 1973 together with the observation of **US Justice Frankfurter** [Dennis v. United States( 341 US 494-592)para 525: page 208 of Final defence argument pack] , as cited by the learned the senior defence counsel which is as below:

**“ Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgemnt is best informed, and therefore most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures.”**

23. Therefore, we have to resolve whether these crimes were committed and if so, whether the accused is guilty of those charges brought against him. The prosecution, in the light of the charges framed, is burdened to prove-(i) commission of the crimes alleged (ii) mode of participation of the accused in committing any of crimes alleged (ii) how he acted in aiding and abetting or providing encouragement or moral support to the commission of any of crimes (iii) How he had complicity to commission of any of crimes (iv) the elements necessary to constitute the offence of crimes against humanity (v) liability of the accused.

24. Admittedly, the accused has been indicted for the crimes committed in violation of customary international law and thus this Tribunal shall not be precluded from borrowing guidance from the jurisprudence evolved to characterize the offences alleged as crimes against humanity.

## **XII. Addressing legal issues agitated**

25. Before we enter into the segment of our discussion on adjudication of charges we consider it convenient to address and resolve the legal issues agitated during summing up of cases of both parties.

### **(i) Does Unexplained Delay frustrates prosecution case**

26. It has been argued on this legal issue by the senior learned counsel for the defence Mr. Abdur Razzak that there has been no limitation in bringing criminal prosecution but such inordinate delay of long 40 years must be explained.

27. Having regard to above submission, we are of view that from the point of morality and sound legal dogma, time bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Conventions of 1949 contain any provisions on statutory limitations to war crimes and crimes against humanity. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

28. Still the Nazi war criminals of the Second World War are being prosecuted. Trials of genocides committed during the 1973 Chilean revolution and the Pol Pot regime of Cambodia in the 1970s are now ongoing. It is a fact of common knowledge that in 1981, **Maurice Papon**, who has died aged 96, was the minister for the budget in the administration of Prime Minister Raymond Barre, when his role in the deportation of French Jews during the Second World War was uncovered. Papon had been charged in 1997 on the basis of his activities from 1942 to 1944. Eventually brought to trial, he was convicted in 1998 of complicity in crimes against humanity and sentenced to a 10-year prison sentence for ordering the arrest and deportation of 1,690 Jews, including 223 children, from the Bordeaux region to the Nazi death camps in Germany.

29. None of this would have been known if it had not been for the research of Michel Bergès, a young French historian working in the departmental archives of the

Gironde. In these forgotten papers he found evidence concerning the forced deportation of Jews from Bordeaux to the transit camp at Drancy, near Paris (from where they were sent to the death camps), during the years 1942 to 1944.

[Source: **Douglas Johnson** :The Guardian, Monday 19 February 2007

[\[http://www.guardian.co.uk/news/2007/feb/19/guardianobituaries.france\]](http://www.guardian.co.uk/news/2007/feb/19/guardianobituaries.france)

30. Indubitably, 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. The Statute was enacted in 1973. But the history says, after the dark episode of assassination of Bangabandhu Sheikh Mujibur Rahman and his family on 15 August 1975 the process was halted and even the Collaborators Order 1972 was repealed on 31.12.1975. The individuals and political organizations which played visibly a notorious and antagonistic role resisting the war of Liberation in 1971 were allowed of being rehabilitated and recognized in all spheres of state. Even some of potential individuals actively affiliated with the politics of Jamat E Islami (JEI) in 1971 and its student wing Islami Chatra Sangha (ICS) got fair opportunity of sharing state power. Democracy too remained halted till 1991 and there was no favourable situation, strong political will and consensus till 2009 to prosecute the offenders under the Act of 1973. This undisputed history of common knowledge itself is explanatory for delayed prosecution and thus the accused cannot be said to have been prosecuted and tried under the Act of 1973 for political purpose.

31. Justice delayed is no longer justice denied, particularly when the perpetrators of core international crimes are brought to the process of justice. However, there can be no recognised theory to insist that such a 'system crime' can only be pursued within a given number of years. Therefore, delayed prosecution does not rest as a clog in prosecuting and trying the accused and creates no mystification about the atrocities committed in 1971 .

**(ii) Legislative Intention in enacting the Act of 1973 and subsequent incorporation of 'Individual' or group of individuals' to the Act by amendment of the Act in 2009**

32. It has been further submitted that the Act of 1973 and first amendment of the constitution will go to show that intention of the framers of the legislation was to prosecute and try the 195 listed war criminals of Pakistan armed force and not the civilians.

33. Till 2009 the Act of 1973 was dormant and no Tribunal was constituted under it. Pursuant to the tripartite agreement of 1974, 195 listed war criminals of Pakistani armed force were allowed to walk free which was derogatory to *jus cogens* norm. The history says, for the reason of state obligation to bring the perpetrators of responsible for the crimes committed in violation of customary international law to justice and in the wake of nation's demand the Act of 1973 has been amended for extending jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts constituting offences as enumerated in the Act of 1973 even in the capacity of an 'individual' or member of 'group of individuals' .

34. We are to perceive the intent of enacting the main Statute together with fortitude of section 3(1) of the Act. At the same time we cannot deviate from extending attention to the protection provided by the Article 47(3) of the Constitution to the Act of 1973 which was enacted to prosecute, try and punish the perpetrators of atrocities committed in 1971 War of Liberation.

35. Thus, we hold that the contention raised by the defence is of no consequence to the accused 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(2) of the Constitution.

**(iii) Tripartite Agreement and immunity to 195 Pakistani war criminals**

36. It has been argued by the learned senior defence counsel that pursuant to the 'tripartite agreement' dated 09.4.1974 195 listed war criminals belonging to Pakistani armed force have been given clemency. Thus the matter of prosecuting and trying them under the Act of 1973 ended with this agreement. As regard local perpetrators who allegedly aided and abetted the Pakistani occupation armed force in committing atrocities including murder, rape, arson the government enacted the Collaborators

Order 1972. Thus the Collaborator Order 1972 was the only legal instrument to bring the local perpetrators to book.

37. Having regard to above submission and careful look to the Act of 1973 and the Collaborators Order 1972 we are constrained to hold that it is not good enough 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 offence(s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pak armed force were allowed to evade justice on the strength of 'tripartite agreement' of 1974.

38. Such agreement was an 'executive act' and it cannot create any clog to prosecute member of 'auxiliary force' or an 'individual' or member of 'group of individuals' as the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was derogatory to the existing law i.e the Act of 1973 enacted to prosecute those offences.

39. It is settled that the *jus cogens* principle refers to peremptory principles or norms from which no derogatory is permitted, and which may therefore operate a treaty or an agreement to the extent of inconsistency with any such principles or norms. We are thus inclined to pen our convincing view that the obligation imposed on the state by the UDHR (Universal Declaration of Human Rights) and the Act of 1973 is indispensable and inescapable and as such the 'tripartite agreement' which is mere an 'executive act' cannot liberate the state from the responsibility to bring the perpetrators of atrocities and system crimes into the process of justice.

40. Amnesty shown to 195 listed war criminals are opposed to peremptory norms of international law. It is to be noted that any agreement and treaty amongst states in derogation of this principle stands void as per the provisions of international treaty law convention [Article 53 of the Vienna Convention on the Law of the Treaties, 1969] .

41. Despite the immunity given to 195 listed war criminals belonging to Pakistani armed force on the strength of 'tripartite agreement' the provisions as contained in section 3(1) of the Act of 1973 has kept the entrance still unbolt to prosecute, try and punish them for shocking and barbaric atrocities committed in 1971 in the territory of Bangladesh. It is to be noted that the perpetrators of crimes against humanity and

genocide are the enemies of mankind. Therefore, we are of the view that the 'tripartite agreement' is not at all a barrier to prosecute local civilian perpetrators under the Act of 1973.

**(iv) The accused could have been prosecuted and tried under the Collaborators Order 1972 and prosecution under the Act of 1973 is malafide**

42. The learned defence counsel has attempted to submit that the accused could have been prosecuted, tried and punished under the Collaborators Order 1972, if actually he had committed any act of aiding or abetting to the commission of crimes alleged.

43. 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. 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) Whether the accused can be prosecuted as an aider or abettor without prosecuting the Principals and his accomplices**

44. It has been argued that the accused has been charged with for the offence of 'murder' the event of which will appear to be isolated and as such for such isolated crimes he could have been prosecuted and tried under the Collaborators Order 1972 which was meant to try the offences as scheduled therein i.e the offences punishable

under the Penal Code. On this score as well the charges brought against the accused cannot be sustainable in law.

45. 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. Therefore, we find that in law, either 'aiding' or 'abetting' alone is ample to render the perpetrator criminally liable.

46. On this legal issue we may recall the principle enunciated by the ICTR Trial Chamber that

**"A person may be tried for complicity in genocide even where the principal perpetrator of the crime has not been identified, or where, for any other reasons, guilt could not be proven."** [ *Akayesu*, (Trial Chamber), September 2, 1998, para. 531 and *Musema* (Trial Chamber), January 27, 2000, para.174].

47. 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. The above international references also consistently supplement our own view that 'abetting' or 'aiding' 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.

**(vi) Definition and Elements of Crime**

48. The learned defence counsel has argued that the offences specified in section 3(2) are not well defined and the same lack of elements. Section 3(2) of the ICTA 1973 does not explicitly contain the 'widespread or systematic' element for constituting the crimes against humanity. In this regard this Tribunal may borrow the elements and definition of crimes as contained in the Rome Statute.

49. The learned defence counsel has argued that the offences specified in section 3(2) are not well defined and the same lack of elements. Section 3(2) of the ICTA 1973 does not explicitly contain the 'widespread or systematic' element for constituting the crimes against humanity. In this regard this Tribunal may borrow the

elements and definition of crimes as contained in the Rome Statute. It has been further argued that an 'attack' may be termed as 'systematic' or 'widespread' if it was in furtherance of policy and plan. Thus the offence if actually happened, in absence of context and policy and plan the same cannot be characterized as crimes against humanity.

50. Tribunal notes that 'policy' and 'plan' are not the elements to constitute the offence of crimes against humanity. It is true that the common denominator of a systematic attack is that it is carried out pursuant to a preconceived policy or plan. But these may be considered as factors only and not as elements. This view finds support from the observation made in paragraph 98 of the judgment in the case of *prosecutor v. Kunarac* [Case No. IT-96-23/1-A: ICTY Appeal Chamber 12 June 2002] which is as below:

**“ Neither the attack nor the acts of the accused needs to be supported by any for of “policy” or “plan”. .....Proof that the attack was directed against a civilian population and that it was widespread or systematic, are legal elements to the crime. But to prove these elements, it is not necessary to show that they were the result of the existence of a policy or plan.....Thus, the existence of a policy or plan may be evidently relevant, but it is not a legal element of the crime.”**

51. It is further submitted that the ICTY Statute does not contain the 'widespread' or 'systematic' element but it has developed jurisprudence by its judgment in the case of *Tadic* (Appeal Chamber: ICTY) that for qualifying the offences as crimes against humanity it must be committed as part of 'widespread' or 'systematic' attack. But the

prosecution has utterly failed to show by evidence that the offences for which the accused has been charged with were part of the 'widespread' or 'systematic' attack.

52. We are of patent view that section 3(2)(a) of the Act is self contained and fairly compatible with the international jurisprudence. If we make a closer look to the contemporary standards of definition of 'Crimes against Humanity' in various Statutes, first 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.

53. It is now settled that the expression '**committed against any civilian population**' as contained in section 3(2) (a) of the Act of 1973 is an expression which specifies that in the context of a crime against humanity the civilian population is the primary object of the attack. 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'. It is the jurisprudence developed in ICTY that identified the 'widespread' or 'systematic' requirement.

54. True, the Rome Statute (a prospective 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. Thus, our Tribunal (ICT) which is a domestic judicial body constituted under a legislation enacted by our Parliament is not obliged by the provisions contained in the Rome Statute. The Rome Statute is not binding upon this Tribunal for resolving the issue of elements requirement to constitute the offence of crime against humanity.

55. If the specific offences of 'Crimes against Humanity' which were committed during 1971 are tried under 1973 Act, it is obvious that they were committed in the 'context' of the 1971 war. This context itself is sufficient to prove the existence of a 'systematic attack' on Bangladeshi self-determined population in 1971. It is the 'context' that transforms an individual's act into a crime against humanity and the accused must be aware of this context in order to be culpable of crime alleged.

56. Thus, an “attack against a civilian population” means the perpetration against a civilian population of a series of acts of violence, or of the kind of mistreatment referred to in sub-section (a) of section 3(2) of the Act of 1973. Conducts constituting ‘Crimes’ ‘committed against civilian population’ thus refers to organized and systemic nature of the attack causing acts of violence to the number of victims belonging to civilian population. Therefore, the claim as to the non-existence of a consistent international standard for the definition of ‘crimes against humanity’ as enumerated in the Act of 1973 is manifestly baseless.

**(vii) Mens rea or Knowledge**

57. The learned senior counsel reiterated that the mens rea element is absent in this case as there has been no facts and circumstances that could validly lead to inference that the accused acted knowing the consequence of the attack and context thereof.

58. It appears that only one paragraph in the *Tadic* judgment refers to this question, and it summarily considers existing case law on whether or not the perpetrator of crimes against humanity must have knowledge of the context within which the acts are committed. [*Prosecutor v. Tadic*, Case No. IT-94-1-T, opinion and judgment, 7 May 1997, para 657]. The *mens rea* of the offences was not considered, most likely because *Dusko Tadic* offered an *alibi* defence, which does not raise questions about intent, and simply denies that the accused was present or involved when the crime was committed.

59. It is not alleged that accused himself directly participated in the actual commission of the crimes alleged. In alternative, he has been charged for aiding or abetting or having complicity to the crimes committed. That is to say, the accused had acted as a ‘secondary perpetrator’ or ‘accomplice’. In such case the acts of assistance and providing encouragement and moral support to the principals is to be presumed from relevant facts and acts of accused either before or at the time of commission of crime or even after the commission thereof.

60. The *mens rea* of the accused for abetting or aiding need not be explicit, it may be inferred from the circumstances. Indeed, as *mens rea* is a state of mind, its proof is typically a matter of inference. In the case in our hand, we are to perceive that the

accused acted having 'awareness' coupled with his conscious decision to accompany the principals to the crime site.

61. However, in light of above observations and settled jurisprudence the matter of *mens rea* or knowledge or intent may be well determined while adjudicating the charges independently.

### **XIII. Relevant and Decisive Factual Aspects**

**(i) Facts relevant to establish the role and association of the accused with the gang of perpetrators consisting of local Biharis namely Aktar goonda, Hakka goonda, Abbas chairman, Hasib Hasmi, Nehal**

62. The unshaken relevant fact of his close and culpable association with the gang of local Biharis including Aktar goonda Nehal, Hasib Hashmi, Abbas Chairman adds further assurance to the role of the accused at the relevant time.

63. **P.W.1 Mozaffar Ahmed Khan**, a valiant freedom fighter who was the President of Keraniganj thana Chatra League in 1969 stated that during the war of liberation in the month of November he came to Mohammadpur, Dhaka in disguise and on the way of his return to home he found accused Abdul Quader Molla being accompanied by his accomplices standing in front of Mohammadpur Physical Training center which was known as the 'torture cell' of Al-Badar having rifle in hand.

64. In cross-examination, in reply to question put to him by the defence P.W.1 has re-affirmed it by saying that he found the accused standing in front of Physical training Centre's gate having a Chinese rifle in hand.

65. We have also found from the **Exhibit-2** a book titled '**Sunset at MIDDAY**' wherein the seventh line of paragraph two at page 97 that "**The workers belonging to purely Islami Chatra Sangha were called Al-Badar**". Besides, from the above unshaken and re-affirmed version it is quite evident too that accused Abdul Quader Molla was a potential member of armed Al-Badar force and had been in Dhaka during the period of war of liberation in 1971.

66. Besides, accused Abdul Quader Molla while deposing as D.W.1 has admitted in cross-examination that he was elected President of Islami Chatra Sangha (ICS) of Shahidullah Hall unit of the University of Dhaka and he in 1977 was appointed as the private secretary of Professor Ghulam Azam pursuant to decision of Jamat E Islami.

67. For the reason of conduct, role and culpable association of the accused with the gang of local Bihari hooligans who were quite antagonistic to the local Bengali people particularly who were in favour of self-determination movement of Bengali nation it is validly inferred without any doubt that accused Abdul Quader Molla had accompanied, encouraged, aided and provided moral support to them to the actual commission of atrocious activities perpetrated in the area of Mirpur that happened during the early part of the war of liberation, in furtherance of 'operation search light' on 25 March 1971. Accordingly, the hearsay evidence of prosecution witnesses have to be viewed, valued and weighed together with the above pertinent relevant facts.

#### **XIV. Adjudication of Charges**

68. With regard to the factual findings, the Tribunal is required only to make findings of those facts which are indispensable to the determination of guilt on a particular charge. The Tribunal, according to settled jurisprudence, is in no way obliged to refer to every phrase pronounced by a witness during his testimony but it may, where it deems appropriate, stress the main parts of the testimony relied upon in support of a finding. Keeping it in mind we are going to adjudicate the charges through providing 'reasoned opinion' on rigorous evaluation of the facts in question by referring the relevant piece of evidence.

#### **Adjudication Charge No.01**

##### **[Pallab Murder]**

69. On cumulative evaluation of testimony and relevant facts and circumstances we have found that accused Abdul Quader Molla and his Bihari accomplices masterminded and executed the killing of Pallab, a civilian, as a part of attack.

70. It is thus validly inferred that the accused having 'awareness' as to the consequences of acts and conduct of those Bihari perpetrators continued his association with them. It was not necessary that the accused must remain present at the crime site when the murder of Pallab was actually committed. In this regard the Tribunal also notes that "*actual physical presence when the crime is committed is not necessary . . . an accused can be considered to have participated in the commission of a crime . . . if he is found to be 'concerned with the killing.'*" [Tadic, (Trial Chamber), May 7, 1997, para. 691].

71. The accused Abdul Quader Molla is thus found to have had 'complicity' to the actual commission of killing Pallab in the manner by bringing him forcibly from Nababpur. The reason of targeting Pallab was that he was in favour of pro-liberation activities and as such it may be unambiguously presumed that killing him was in furtherance of systematic attack directed against civilian population. As a result, the accused incurs criminal liability for having his 'complicity' to the commission of the murder of Pallab constituting the offence of crime against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which is punishable under section 20(2) of the Act.

### **Adjudication of Charge No.2**

#### **[Meherunnesa and her inmates killing]**

72. The act of leading the gang of actual perpetrators is indeed an act forming part of the attack that substantially contributed and provided 'moral support' and 'encouragement' to the actual commission of the crime. Merely for the reason that the accused had no physical participation to the perpetration he cannot be relieved from

liability as his act of leading the gang of course provided substantial moral support and encouragement to the principals.

73. Complicity encompasses 'culpable association' with the principals, and providing 'moral support', 'encouragement' to them. An accused can be considered to have participated in the commission of a crime if he is found to be 'concerned with the killing. By the act of leading the gang of perpetrators the accused is thus

found to have provided moral support and encouragement to the principals to the actual commission of the crime. It is to be noted that a single or relatively limited number of acts on part of the accused would qualify as a crime against humanity, unless those acts may be said to be isolated. Leading the gang of perpetrators to the crime site was of course not an isolated act.

74. It may be lawfully inferred that the accused knew or had reason to know that the principals were acting with intent to commit the offence of murder. The circumstances and facts insist to believe that the accused, as he led the gang of perpetrators, knew the intent of the principals. Thus, it has been proved that the accused Abdul Quader Molla had, with knowledge and *mens rea*, conscious complicity to the commission of the offence murder as crimes against humanity as listed in charge no.2 and thereby he incurs criminal liability for 'complicity' in commission of the murder of Meherunnesa and her inmates constituting the offence of crimes against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.

### **Adjudication of Charge No.3**

#### **[Khandoker Abu Taleb Killing]**

75. Cumulative effect of evidence and relevant facts and circumstances may have a decisive role in determining the culpability of the accused. Circumstantial evidence is not considered to be of less probative value than direct evidence. The act of culpable association of the accused with the principals and the evidence as discussed above inevitably proves that the accused Abdul Quader Molla was involved with the commission of the alleged brutal killing. Considering the context and pattern of attack we are satisfied that the aforementioned killing formed part of a systematic or

organised attack against the civilian population. The victim of the alleged killing was a member of pro-liberation civilian population. The Tribunal is thus satisfied that the aforementioned killing constitutes the offence of murder as a crime against humanity committed in violation of customary international law.

76. We have already observed that actual physical participation when the crime is committed is not necessary and an accused can be considered to have participated

'in the commission of a crime' if he is found to be 'concerned' with the killing. Since the testimony of P.W.5 as to the fact of bringing the victim to Mirpur by Non-Bangalee accountant Abdul Halim by his car who handed him over to accused Abdul Quader Molla and at the time of slaughtering the victim accused was present at the crime site carries sufficient probative value the accused is considered to have acted so intending to provide moral support and encouragement to the principals with whom he maintained continuous and culpable association, accused Abdul Quader Molla incurs criminal liability for 'complicity' in commission of the murder of Khandoker Abu Taleb constituting the offence of crimes against humanity as specified in section 3(2)(a)(h) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.

#### **Adjudication of Charge No.4**

##### **[Ghatar Char and Bhawal Khan Bari killing]**

77. Like all elements of a crime, the identification of the Accused must be proved by the Prosecution beyond reasonable doubt. In assessing identification evidence, it is to be taken into account a number of relevant factors, including: the circumstances in which each witness claimed to have observed the accused; the length of the observation; the familiarity of the witness with the Accused prior to the identification; and the description given by the witness of his or her identification of the accused. But as we see, the evidence does not inspire us to believe that the P.W.7 and P.W.8 were familiar as to identity of the accused even since prior to the alleged event. None of these two witnesses claim so.

78. In view of above discussion and reasons the Tribunal notes unanimously that it has not been proved beyond reasonable doubt that the accused Abdul Quader Molla accompanied the Pakistani perpetrators to the crime site having rifle in hand and that the person whom P.W.8 claims to have seen at the crime site was none but the accused. It is not plausible too that P.W.8 had learnt from P.W.7 that accused Abdul Quader Molla accompanied the principals to the crime site to the accomplishment of the offence of mass killing. Because. Testimony of P.W.7, in this regard, has been found to be disgustingly conflicting and contradictory inspiring no credence.

79. Mere fact that P.W.1 saw the accused standing in front of Physical Training center, Dhaka having rifle in hand, on one day prior to the alleged event, does not connect the accused with the commission of the event of massacre as listed in charge no.4. However, we are persuaded to note that the commission of the event of mass killing by launching attack directing the civilians as crimes against humanity on the date time and in the manner causing deaths of numerous civilians has been proved. Besides, commission of crimes alleged is not disputed. But for the reasons as stated above we are not convinced to arrive at decision that the guilt of accused has been proved. Prosecution has failed to prove participation or complicity or act on part of the accused to the commission of the offence of crimes against humanity by adducing lawful and credible evidence. As a result accused Abdul Quader Molla is not found to have incurred criminal liability for the commission of offence of mass killing as crimes against humanity as listed in charge no.4.

#### **Adjudication of Charge No.05**

##### **[Alubdi Mass Killing]**

80. On final evaluation of evidence and relevant facts and circumstances, we are convinced to arrive at decision that the prosecution has been able to prove it beyond reasonable doubt by lawful and credible evidence of live witnesses that the accused knowing the intent of the main perpetrators accompanied the gang and remained physically present at the crime site having rifle in hand. Prosecution has been able to show that the accused Abdul Quader Molla, his Bihari accomplices and the Pakistani army, acting pursuant to a common design possessed the same criminal intention in accomplishment of the massacre.

81. It is validly inferred that the accused Abdul Quader Molla with full 'awareness' of the consequence of the attack accompanied the principals with intent to assist and encourage the execution of the 'operation'. Such acts forming attack are sufficient to characterize the outcome of the attack causing mass killing of unarmed civilians as crimes against humanity.

82. Section 4(1) of the Act of 1973 contains provision as to liability of crimes. It reads as below:



*“When any crime as specified in section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone”.*

83. It has been proved that the horrific event of mass killing of 300-350 unarmed civilians of Alubdi village was perpetrated by a gang of local Bihari hooligans and their accomplice accused Abdul Quader Molla and Pakistani army. Accused Abdul Quader Molla physically accompanied the gang to the crime site having rifle in hand and therefore he is liable for the atrocious event of massacre in the same manner as if it was done by him alone. Therefore, accused Abdul Quader Molla incurs criminal liability under section 4(1) of the Act of 1973 for the offence of mass killing as crimes against humanity as specified in section 3(2)(a) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.

**Adjudication of Charge No.06:**

**[Hazrat Ali and his family inmates killing and Rape]**

84. The Tribunal notes that accused Abdul Quader Molla had physically participated in the attack targeting the father and family members of the P.W.3 as her father belonged to Awami League politics and was a pro-liberation civilian. Testimony of P.W3 demonstrates evidently that the accused, by his acts of ‘**accompanying**’ the gang of *Bihari* and local Aktar goonda and also by an act of forcibly dragging Hazrat Ali Laskar out of house, Abdul Quader Molla’s presence in the crime site made him criminally linked with the commission of the offence of killing of Bangalee civilians. Thus, it is lawfully presumed that the accused had *actus reus* in providing moral support and aid to the commission of offence. The *actus reus* of abetting requires assistance, encouragement or moral support which has a substantial effect on the perpetration of the crimes.

85. Now the question has been raised by the defence that the principal offenders have not been identified and brought to the process of justice and thus the accused cannot be held responsible as aider and abettor. It has been held by the Appeal Chamber of ICTY, in the case of *Kristic* that –

*"A defendant may be convicted for having aided and abetted a crime which requires specific intent even where the principal perpetrators have not been tried or identified ( April 19, 2004 para 143 of the judgement) ."*

86. No person of normal human prudence will come to a conclusion that at the time of incident of part of systematic attack, the accused who accompanied the principal perpetrators had a different or innocent intent. Rather, the evidence of P.W.3 demonstrates that the accused and the principals made the attack with common intent to accomplish their explicit and similar intent of killing.

87. The testimony of a single witness on a material fact does not, as a matter of law, require corroboration. In such situations, the Tribunal has carefully scrutinized the evidence of P.W.3 the live witness before relying upon it to a decisive extent. Since the horrific event was committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passerby will be witnesses. P.W.3 is the only survived member of victim family and thus her evidence cannot be brushed aside or viewed with suspicion

88. Indeed, within a single attack, there may exist a combination of the enumerated crimes, for example murder, rape etc. In view of discussion as made above and taking the settled jurisprudence into account eventually we are persuaded that the acts of accused Abdul Quader Molla , as has been testified by the P.W.3, in the course of implementation of the actual crime of killings and rape, render him criminally responsible for the commission of the crime that has been established to have taken place as a part of systematic attack and as such the accused Abdul Quader Molla is

found to have incurred criminal liability under section 4(1) of the Act for the offence as mentioned in section 3(2)(a) of the Act of 1973 which are punishable under section 20(2) read with section 3(1) of the said Act.

**XV. Contextual requirement to qualify the offences proved as crimes against humanity**

89. From the segment of our discussion on adjudication of charges we have found the events of atrocities constituting crimes against humanity were perpetrated directing the unarmed civilians belonging to pro-liberation ideology. The offences narrated in charge nos. 1,2,3,5 and 6 took place between 26<sup>th</sup> March 1971 to 24<sup>th</sup> April 1971 i.e. within the period of one month of 'operation search light' on 25 March 1971. Only the event narrated in charge no.4 allegedly took place on 25.11.1971.

90. Admittedly. Accused was the President of Islami Chatra Sangha(ICS), Shahidullah Hall Unit, University of Dhaka, at the relevant time. We have also found from the **Exhibit-2** a book titled '**Sunset at Midday**' [Mohi Uddin Chowdhury, Qirtas Publications, 1998, Karachi, Pakistan] wherein the paragraph two at page 97 speaks that "**The workers belonging to purely Islami Chatra Sangha were called Al-Badar**". But in absence of any other evidence it would be rather confusing to infer that the accused acted during the period of 26<sup>th</sup> March 1971 to 24<sup>th</sup> April 1971 as a member of Al-Badar to the commission of offences narrated in charge nos. 1,2,3,5 and 6. Rather, it is found that the accused acted and participated by accompanying the principals as an 'individual' and a member of 'group of individuals' to the actual commission of crimes alleged.

91. However, We have also found it proved from evidence as discussed above that the accused Abdul Quader Molla physically accompanied the principals and acted with knowledge and common intent or had complicity to the commission of those atrocities and he (accused) committed criminal acts in the capacity of a member of 'group of individuals' (relating to charge nos. 1,2,3, and 6) and in the capacity of an 'armed member' of 'group of individuals' (relating to charge no.5) Under what context the accused committed such acts forming part of attack directed against civilian population? We need to have look to the contextual backdrop of perpetration of such crimes in furtherance of 'operation search light' on 25 March 1971.

92. It is essential to be established that the crimes for which the accused has been found criminally liable and guilty, as discussed above, were not isolated in nature and the same were committed under a different context and pattern in implementation of organizational policy and plan, although policy or plan are not considered as elements of the offence of crime against humanity.

93. In determining the fact as to whether the atrocious acts which are already proved to have been committed were directed against Bengali civilian population constituting the crimes against humanity in 1971 during the War of Liberation it is to be considered that the criminal acts committed in violation of customary international law constituting the offences enumerated in section 3(2)(a) of the Act of 1973 were connected to some policy of the government or an organization. It is to be noted too that such policy and plan are not the required elements to constitute the offence of crimes against humanity. These may be taken into consideration as factors for the purpose of deciding the context upon which the offences were committed.

#### **Context prevailing in 1971 in the territory of Bangladesh**

94. It is indeed a history now that the Pakistani army with the aid of its auxiliary forces, pro-Pakistan political organizations implemented the commission of atrocities in 1971 in the territory of Bangladesh in furtherance of following policies:

- Policy was to target the self-determined Bangladeshi civilian population
- High level political or military authorities, resources military or other were involved to implement the policy
- Auxiliary forces were established in aiding the implementation of the policy
- The regular and continuous horrific pattern of atrocities perpetrated against the targeted non combatant civilian population.

95. The above facts in relation to policies are not only widely known but also beyond reasonable dispute. The context itself reflected from above policies is sufficient to prove that the offences of crimes against humanity as specified in section 3(2)(a) of the Act of 1973 were the inevitable effect of part of systematic attack directed against civilian population. This view finds support from the observation made by the Trial Chamber of ICTY in the case of *Blaskic* as mentioned above.

96. *Anthony Mascarenhas* in a report titled '**Genocide**' published in **The Sunday Times**, June 13, 1971 found as below:

“SO THE ARMY is not going to pull out. The Government’s policy for East Bengal was spelled out to me in the Eastern Command headquarters at Dacca. It has three elements:-

- (1) The Bengalis have proved themselves “unreliable” and must be ruled by West Pakistanis;
- (2) The Bengalis will have to be re-educated along proper Islamic lines. The “Islamisation of the masses” – this is the official jargon – is intended to eliminate secessionist tendencies and provide a strong religious bond with West Pakistan;
- (3) When the Hindus have been eliminated by death and flight, their property will be used as a golden carrot to win over the under-privileged Muslim.”

[Source:[http://www.docstrangelove.com/uploads/1971/foreign/19710613\\_tst\\_genocide\\_center\\_page.pdf](http://www.docstrangelove.com/uploads/1971/foreign/19710613_tst_genocide_center_page.pdf) :

See also: Bangladesh Documents, page 371: Ministry of External Affairs, New Delhi]

97. From the backdrop and context it is thus quite evident that the existence of factors, as discussed above, lends assurance that the atrocious criminal acts ‘directed against civilian population’ formed part of ‘systematic attack’. Section 3(2) (a) of the Act of 1973 enumerates which acts are categorized as the offence of crimes against humanity. Any of such acts is committed ‘against any civilian population’ shall fall within the offence of crimes against humanity. The notion of ‘attack’ thus embodies the notion of acting purposefully to the detriment of the interest or well being of a civilian population and the ‘population’ need not be the entire population of a state, city, or town or village.

98. Thus, the phrase acts ‘committed against any civilian population’ as occurred in section 3(2)(a) clearly signifies that the acts forming attack must be directed against the target population to the accomplishment of the crimes against humanity and the accused need only know his acts are part thereof .

#### **XVI. Defence Plea of *Alibi***

99. No specific defence case could be attributed from the trend of cross-examination of prosecution witnesses by the defence. Rather we have found that contradictory suggestions have been put to prosecution witnesses, in order to prove the plea of *alibi*. The evidence adduced at trial demonstrated that for the most part, the accused

did not dispute the facts alleged. He disputes by examining himself as D.W.1 that (i) since mid-March 1971 to November-December 1972, he was not in the locality of Mirpur, Dhaka (ii) he used to stay in Shahidullah hall of the University of Dhaka and on 12 March 1971 leaving Dhaka he went to his native home at Amirabad in Faridpur where he stayed till November-December 1972 (iii) he was not associated with the election campaign in 1970 and (iv) he had no link with the Jamat-e-Islami and Bihari hooligans of Mirpur locality.

100. As has been held by the Appeals Chamber in the *Celibici Case*, the submission of an *alibi* by the Defence does not constitute a defence in its proper sense. It has been observed in the judgment that

**“It is a common misuse of the word to describe an alibi as a “Defence”. If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a Defence in its true sense at all. By raising this issue, the defendant does no more [than] require the Prosecution to eliminate the reasonable possibility that the alibi is true.”**

101. However, in order to establish the plea of *alibi*, defence has come up with another story. D.W.1 Abdul Quader Molla stated that on 23 March 1971 in the locality of his native village one Mafizur Rahman started organizing training for freedom fighters locally and accordingly he and 30-40 others received training till the Pakistani army entered into Faridpur on 30 April 1971.

102. But the above defence cases do not appear to have confronted the prosecution case for excluding complicity of the accused. Besides, how far the claim of receiving training at own native village for joining freedom fight is believable? Admittedly, the accused was the president of Islami Chatra Sangha, Shahidulla Hall Unit, Dhaka University and prior to it he was the president of this student wing of Jamat E Islami (JEI) when he was student of Faridpur Rajendra College. We do not find any rationale to believe that being a potential leader of the student wing of a regimented political organisation Jamat E Islami accused Abdul Quader Molla was inspired to receive such training to join as freedom fighter.

103. Exhibit-2 a book titled 'Sunset at Midday' [Mohi Uddin Chowdhury, Qirtas Publications, 1998, Karachi, Pakistan] wherein the paragraph two at page 97 speaks that "The workers belonging to purely Islami Chatra Sangha were called Al-Badar". Fox Butterfield wrote in the New York Times, January 3, 1972 that—"Al Badar is believed to have been the action section of Jamat-e-Islami, carefully organised after the Pakistani crackdown last March." Therefore, story of receiving training by accused Abdul Quader Molla at own native village, in the month of March 1971, to join freedom fight is nothing but a cock and bull story.

104. In view of reasons enumerated above we are thus persuaded to conclude that the accused herein has miserably failed to bring on record any credible facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. But it could not be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused in the locality of Mirpur, Dhaka at the relevant time.

## XVII. Conclusion

105. We are convinced from the evidence, oral and documentary, led by the prosecution that the accused, at the relevant time of commission of alleged crimes proved, acted as an atrocious member of 'group of individuals' in perpetrating the crimes. As a result, we conclude that the accused Abdul Quader Molla had 'complicity' to the commission of the offences in relation to charge nos. 1, 2 and 3 for which he has been charged in the capacity of an 'individual' and a member of atrocious 'group of individuals'.

106. According to section 4(1) of the Act of 1973 an individual incurs criminal liability for the direct commission of a crime, whether as an individual or jointly. In the case in hand, in dealing with the charge nos. 5 and 6 we have found that the accused Abdul Quader Molla himself had participated and accompanied the armed gang of perpetrators to the accomplishment of crimes and as such he is held criminally responsible under section 4(1) of the Act of 1973 for the commission of crimes proved as listed in charge nos. 5 and 6.

107. **C.L. Sulzberger** wrote in the **New York Times**, **June 16, 1971** describing the horrific nature and untold extent of atrocities committed in the territory of Bangladesh. It shakes the conscious of mankind. It imprints colossal pains to the Bangalee nation. **C.L. Sulzberger** wrote that-

“Hiroshima and Nagasaki are vividly remembered by the mind’s eye primarily because of the novel means that brought holocaust to those cities. Statistically comparable disasters in Hamburg and Dresden are more easily forgotten; they were produced by what we already then conceived of as “conventional” methods.

Against this background one must view the appalling catastrophe of East Pakistan whose scale is so immense that it exceeds the dolorimeter capacity by which human sympathy is measured. No one can hope to count the dead, wounded, missing, homeless or stricken whose number grows each day. “

[Source: Bangladesh Documents: Volume, page 442: Ministry of External Affairs, New Delhi]

108. The above observation made on 16 June 1971 gives an impression as to the scale and dreadful nature of atrocities which were carried out through out the war of liberation in 1971. The offences for which the accused Abdul Quader Molla has been found responsible are the part of such atrocities committed in context of the war of liberation 1971 in collaboration of anti-liberation and antagonistic political organization Jamat E Islami, group of pro-Pakistan people and the occupation Pakistani army with intent to annihilate the Bengali nation.

## **XVIII. VERDICT ON CONVICTION**

109. For the reasons set out in this Judgment and having considered all evidence, materials on record and arguments advanced by the learned counsels in course of summing up of their respective cases, the Tribunal **unanimously** finds the accused **Abdul Quader Molla**



**Charge No.1: GUILTY** of the offence of 'complicity' to commit murder as '**crimes against humanity**' as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.2: GUILTY** of the offence of 'complicity' to commit murder as '**crimes against humanity**' as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.3: GUILTY** of the offence of 'complicity' to commit murder as '**crimes against humanity**' as specified in section 3(2)(a)(h) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.4: NOT GUILTY** of the offence of 'abetting' or in the alternative 'complicity' to commit murders as '**crimes against humanity**' as specified in section 3(2)(a)(g)(h) of the Act of 1973 and he be acquitted thereof accordingly.

**Charge No.5: GUILTY** of the offence of murders as '**crimes against humanity**' as specified in section 3(2)(a) of the Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

**Charge No.6: GUILTY** of the offences of murder and rape as '**crimes against humanity**' as specified in section 3(2)(a) of the Act 1973 he be convicted and sentenced under section 20(2) of the said Act.

## **XIX. VERDICT ON SENTENCE**

110. We have taken due notice of the intrinsic magnitude of the offence of murders as 'crimes against humanity' being offences which are predominantly shocking to the conscience of mankind. We have carefully considered the mode of participation of the accused to the commission of crimes proved and the proportionate to the gravity of offences. The principle of proportionality implies that sentences must reflect the predominant standard of proportionality between the gravity of the

offence and the degree of responsibility of the offender. In assessing the gravity of the offence, we have taken the form and degree of the Accused's participation in the crimes into account.

111. We are of agreed view that justice be met if for the crimes as listed in **charge nos. 5 and 6** the accused Abdul Quader Molla who has been found guilty beyond reasonable doubt is condemned to a single sentence of '**imprisonment for life**' And for the crimes as listed in **charge nos. 1, 2 and 3** to a single sentence of '**imprisonment for fifteen (15) years**' under section 20(2) of the Act of 1973. Accordingly, we do hereby render the following unanimous ORDER on SENTENCE.

Hence, it is

**ORDERED**

That the accused **Abdul Quader Molla** son of late Sanauallah Molla of village Amirabad Police Station Sadarpur District-Faridpur at present Flat No. 8/A, Green Valley Apartment, 493, Boro Moghbazar PS. Ramna, Dhaka is found guilty of the offences of '**crimes against humanity**' enumerated in section 3(2) of the International Crimes (Tribunals) Act, 1973 as **listed in charge nos. 1, 2, 3, 5 and 6** and he be convicted and condemned to a single sentence of '**imprisonment for life**' for **charge nos. 5 and 6** And also for the crimes as listed in **charge nos. 1, 2 and 3** to a single sentence of '**imprisonment for fifteen (15) years**' under section 20(2) of the Act of 1973. The accused Abdul Quader Molla is however found not guilty of offence of crimes against humanity as listed in **charge no.4** and he be acquitted thereof.

However, as the convict Abdul Quader Molla is sentenced to 'imprisonment for life', the sentence of 'imprisonment for 15 years' will naturally get merged into the sentence of 'imprisonment for life'. This sentence shall be carried out under section 20(3) of the Act of 1973.

The sentence so awarded shall commence forthwith from the date of this judgment as required under Rule 46(2) of the Rules of Procedure, 2012 (ROP) of the Tribunal-2(ICT-2) and the convict be sent to the prison with a conviction warrant to serve out the sentence accordingly.

Let copy of the judgment be sent to the District Magistrate, Dhaka for information and causing necessary action.

Let certified copy of the judgment be furnished to the prosecution and the convict at once.

**Justice Obaidul Hassan, Chairman**

**Justice Md. Mozibur Rahman Miah, Member**

**Judge Md. Shahinur Islam, Member**