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International Crimes Tribunal-2

Old High Court Building, Dhaka, Bangladesh

ICT- BD Case No. 01 of 2013

Chief Prosecutor

Vs.

(1) Chowdhury Mueen Uddin (Absconded), and

(2) Ashrafuzzaman Khan (Absconded)

Present:

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Miah, Member

Judge Md. Shahinur Islam, Member

Order No.08

Dated 24.06.2013

Mr. Sahidur Rahman, Prosecutor

..... For the prosecution

Mr. Abdus Shukur Khan, State Defence Counsel

..... For accused Ashrafuzzaman Khan and

Ms. Salam Haye, State defence counsel

.....for accused Chowdhury Mueen Uddin

[Decision on Charge Framing Matter]

1. Accused **(1) Chowdhury Mueen Uddin** and **(2) Ashrafuzzaman Khan** have been absconded or concealed themselves and thus they are not present before this Tribunal. The trial is being held in absentia.

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

I. Introduction and Formation of the Tribunal

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

II. Brief Historical Context

4. 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.
5. 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.

6. 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 and power is not handed over to the leader of the majority party. On 26th March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25th March, Bangabandhu declared independence of Bangladesh independent immediately before he was arrested by the Pakistani authorities.
7. 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 Bangalee, 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.
8. 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 independence for the people of Bangladesh was strenuous and torturous, grimy with blood, toil and untold sacrifices. In

the contemporary world history, perhaps no nation paid as dearly as the Bangalee did for their emancipation.

III. Brief account of the Accused Persons

Accused Chowdhury Mueen Uddin

9. Accused Chowdhury Mueen Uddin son of late Delwar Hossain Chowdhury and late Deljan Begum of 'Chowdhury Bari' village Chanpur under police station Daganbhuian near Fajilerghat Bazar, district Feni was a student of Dhaka University till independence of Bangladesh. He had served as staff reporter of the Daily Purbadesh. He was a central leader of Islami Chatra Sangha [ICS]. During the war of liberation in 1971 he was a member of Razakar and subsequently a significant leader of Al-Badar and had allegedly played active and key role to wipe out the intellectuals including the university teachers. After independence of Bangladesh Chowdhury Mueen Uddin went to Pakistan and then to London and since then he has been there at 1, Jonson Road, Tottenham, London NJ54JU, UK and there he has been the Chairman of Tottenham Mosque, vice chairman of national Health Service, Director, Muslim Spiritual care Provision in the national Health Service. The family members of Chowdhury Mueen Uddin were allegedly against the war of liberation in 1971

Accused Ashrafuzzaman Khan

10. Accused Ashrafuzzaman Khan @ Naeb Ali Khan son of late Md. Ajahar Ali Khan and late Roimunnesa of village Chotovatara, Chiler par under police station Maksudpur district Gopalganj and at present 162-15, Highland: Ave, Apt, 3C Jamaica, New York, 11432, USA was born on 28 February 1948. He passed HSC examination in 1967 from Siddeswari Degree College and got admitted in the University of Dhaka in Islami Studies department [session 1967-68] and was a non-resident student of Haji Muhammad Mohsin Hall of Dhaka University. He obtained BA [Hons] in 1970. He was a central committee member of Islami Chatra Sangha [ICS]. During the war of liberation in 1971 he was allegedly assigned with the responsibility of member of Al-Badar high command in Dhaka and had allegedly acted as the chief executor

of intellectual killings. As a key member of Al-Badar he allegedly led the killings. He allegedly served as commander of Gaji Salahuddin Company of Al-Badar. Currently he has been serving as a member of Islamic Circle of North America [ICNA]

IV. Procedural History

- 11.** Finally, the Chief Prosecutor, on the basis of the report and documents submitted therewith by the Investigation Agency, after completion of investigation, submitted the 'Formal Charge' on 28.4.2013 under section 9(1) of the Act of 1973 before this Tribunal alleging that the accused **1) Chowdhury Mueen Uddin**, and **(2) Ashrafuzzaman Khan**, (*Absconded Accused*) *members of AB high command* had committed crimes against humanity, including abetting and also for complicity to commit such crimes narrated in the formal charge during the period of War of Liberation in 1971 and thereby proceedings commenced.
- 12.** Thereafter, the Tribunal, under Rule 29(1) of the Rules of Procedure, took cognizance of offences as mentioned in section 3(2) (a)(b)(g)(h) of the Act of 1973 and issued warrant of arrest for causing appearance of the accused persons as required under Rule 30.
- 13.** Dhaka Metropolitan Police (DMP) submitted the execution report before the Tribunal stating that the accused persons could not be arrested as they have already absconded and they are learnt to have left the country since long. In this circumstance, the Tribunal, as required under Rule 31, ordered to publish a notice in two daily newspapers, one in Bangla and another in English asking the accused to appear before this Tribunal within ten (10) days from the date of publication of such notice. Accordingly notice was published on **14.5.2013** in the issue of 'The daily Janakantha' (Bengali daily) and 'The daily Star' (English daily) in the issue of **15.5.2013**. But despite publication of such notice the accused persons have not appeared before this Tribunal.
- 14.** On 27.5.2013, the Tribunal has observed that there have been reasons to believe that the accused have absconded or have concealed themselves so that they cannot be arrested and produced before the Tribunal and there is no immediate prospect for arresting them, and as

such it ordered that the trial against the accused persons shall be held in his *absentia* under section 10A(1) of the International Crimes (Tribunals) Act 1973 (as amended up-to-date) together with the Rule 32 and accordingly it appointed Mr. Abdus Shukur Khan, Advocate, Bangladesh Supreme Court, as state defence counsel to defend the absconded accused Ashrafuzzaman Khan and Ms Salma Haye, Advocate, Bangladesh Supreme Court, as state defence counsel to defend the absconded accused Chowdhury Mueen Uddin who will have remuneration to be determined by the Tribunal [Section 10A(2) of the Act] . Tribunal also directed the prosecution by its order no. 5 dated 27.5.2013 to submit copy of formal charge and the documents which it intends to rely upon by 04.6.2013 for supplying the same to the appointed state defence counsels. On 04.6.2013, the state defence counsels informed the Tribunal that they received the copy of formal charge, statement of witnesses and documents submitted therewith from the office of the Registrar. Thereafter, the Tribunal fixed 16 June 2013 for hearing the charge matter.

V. Submission by the Prosecutor

15. At the outset, the learned prosecutor drew attention to the historical brief background of war of liberation in 1971. Next, it has been submitted that following the ‘operation search light’ on 25 March 1971 the Pakistani occupation army started committing atrocities directing pro-liberation Bengali civilians, freedom fighters, minority community, intellectuals. Para militia forces like Razakars, Al-Badar, Al-Shams were formed under coordination of pro-Pakistan Islamist political party Jamat E Islami. Al-Badar a wing of Razakars was formed of workers of ICS, the student wing of JEI. Al-Badar acted as ‘killing squad’, in furtherance of plan and policy of Pakistani occupation army. At the fag end of the war of liberation, a blueprint and plan was designed to kill the listed notable intellectuals and thus in between 10-16 December 1971, the accused persons the members of Al-Badar high command led the armed Al-Badar group and had launched attack directing numerous intellectuals including journalists, professors, doctors, academicians. In a planned and designed process of the attack the accused persons led the armed gang of Al-Badar in picking them up from their residences on gun point and were taken to killing fields at outskirts of the Dhaka

city and were brutally killed. Body of many, martyrs could not be traced even, although some of martyrs' body could be found in the killing fields of Mirpur, Rayer Bazar. The accused Chowdhury Mueen Uddin and Ashrafuzzaman Khan acted as 'operation-in-charge' and 'chief executor' of Al-Badar to the accomplishment of the barbaric crimes, in furtherance of common plan and design, with intent to paralyze the Bengali nation.

16. The documents and statement of witnesses will show that the accused had 'complicity' in committing crimes against humanity, by aiding, abetting, ordering, encouraging and providing moral support to the members of AB on whom they had *de facto* reasonable and material ability and authority to control, as members of its high command. Prima facie it will appear that the accused persons by their physical participation and also by their act of abetment and facilitation to the commission of crimes narrated in the allegations have incurred liability both under section 4(1) and 4(2) of the Act of 1973. Prosecution has been able to submit necessary and relevant evidence together with the formal charge to prove the events and culpability of the accused persons.

17. The learned prosecutor finally insisted on framing of charges on collective consideration of the Formal Charge, statement of witnesses and documents which manifestly indicate that there are sufficient grounds of presuming that the accused were criminally culpable for the commission of offences as mentioned in section 3(2) of the Act.

VI. Submission on behalf of accused Ashrafuzzaman Khan

18. Mr. Abdus Shukur Khan, the learned state defence counsel for the absconded accused Ashrafuzzaman Khan by placing an application seeking discharge of the accused has submitted that the Pakistani army committed the killing of intellectuals, in furtherance of their common plan and policy. Accused was not involved with any of criminal acts narrated in the formal charge. He did not belong to Al-Badar. After independence, local collaborators were prosecuted and tried under the Collaborator Order 1972 for their criminal activities. But the present accused was not brought to justice under the said Order. In 1997 a case

was lodged with police station by one Farida Banu, sister of martyr professor Gias Uddin bringing the allegation of abduction and killing of intellectuals. But the case so lodged was ended with the Final Report as mistake of law on 20.8.2002. Therefore, the present accused cannot be prosecuted and tried for the same offence and bringing prosecution against him is barred by the doctrine of double jeopardy under Article 35(2) of the Constitution. The reports published in newspapers as submitted by the prosecution do not show that the accused was involved with designing plan, in any manner. Therefore the accused is liable to be discharged.

VII. Submission on behalf of Chowdhury Mueen Uddin

19. Ms. Salma Haye Tuni by seeking discharge of the accused, by filing an application, has submitted that the accused was not linked with any of crimes alleged; that prosecution documents do not demonstrate his involvement with the criminal acts alleged; that he was not prosecuted and tried under the Collaborator Order 1972 which was enacted to bring the local perpetrators to book. It has further submitted that the accused Chowdhury Mueen Uddin was a journalist of The Daily Purbadesh in 1971 and also a student of the University of Dhaka at the relevant time. The event of killing of notable intellectuals in December 1971 is an undisputed history. But prosecution could not bring papers to show that the accused belonged to Al-Badar and he had a position of authority on it. Thus the accused deserves to be discharged.

VIII. Deliberations and Decision

20. We have carefully gone through the formal charge, statement of witnesses and the documents submitted therewith. It appears that the formal charge and the statement of witnesses prima facie disclose direct and substantial participation of the accused persons to the commission of the offences as specified in section 3(2) of the Act. At this stage neither the guilt nor the innocence can be determined conclusively. The status or position and role of the accused persons during 1971 or whether they were members of Al-Badar force or in a position of command or authority can only be well adjudicated at trial only, not at this stage.

21. The Act of 1973 is meant to prosecute 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 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. Rather, it is manifested from 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 offence(s), can be brought to justice under the Act of 1973.

(i) The Collaborators Order 1972

22. The Collaborators Order 1972 was a distinct legislation aiming to prosecute and try only the local persons responsible for the offences scheduled therein. 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. In the case in hand we have found that there are sufficient grounds to presume *prima facie* that the accused persons were associated with the orchestration and perpetration of the barbaric criminal acts, as narrated in the formal charge, constituting the offences enumerated in the 1973 Act. The offences enumerated in the Act of 1973 are recognised as ‘international crimes’ committed in violation of customary international law. Therefore, we are disinclined to accept the proposition that the accused persons could not be prosecuted and tried now under the Act of 1973 as they were not brought to justice under the Collaborators Order 1972.

(ii) Doctrine of Double Jeopardy

23. Mere initiation of a first information report with police station in 1997 and submission of final report as mistake of law afterwards in 2002 does not create any clog in bringing prosecution under the Act of 1973. Besides, ‘offence’ punishable under the Penal Code does not appear to

be 'same offence' for which the accused persons have been prosecuted under the Act of 1973. The Tribunal, in determining the issue of double jeopardy, is concerned with offences or crimes as clearly refer to the Act of 1973 and not the Penal Code.

24. Where a criminal charge has been adjudicated upon by a Court having jurisdiction to hear and determine it, that adjudication, whether it takes the form of an acquittal or conviction, is final as to the matter so adjudicated upon, and may be pleaded as a bar to any subsequent prosecution for the same offence. [*R. v. Miles (1890) 24 Q.B.D. 423 at 431 (Q.B.) per Hawkins J.*] There are three essential criteria to be satisfied, to resolve the issue of prohibition by the principle of double jeopardy: **(i)** The accused had formerly been in jeopardy (or peril) of a lawful conviction before a court of competent criminal jurisdiction; **(ii)** The former criminal trial must have concluded with a final determination of the facts at issue, *i.e.* that there has been a final verdict, either of acquittal or conviction, following a trial on the merits; and **(iii)** The criminal offence for which the accused has been charged on the second occasion is the same or substantially the same offence as that for which he had formerly been acquitted or convicted.

25. It is to be tested as well whether two criminal offences are the 'same' for the purposes of double jeopardy jurisprudence. **Lord Morris** explained that-

what has to be considered is whether the crime or offence charged in the later indictment is the same or is in effect or is substantially the same as the crime charged (or in respect of which there could have been a conviction) in a former indictment and that it is immaterial that the facts under examination or the witnesses being called in the later proceedings are the same as those on some earlier proceedings. [1964] A.C. 1254 at 1306 [H.L.(E.)].

26. We are not persuaded with the submission advanced by Mr. Shukur Khan, on the issue of 'double jeopardy'. Thus, the doctrine of double jeopardy prohibits that the accused should not have been put in peril of

conviction for the same criminal offence as that with which he is then prosecuted and punished. Lodgment of FIR ended with submission of Final report as mistake of law. Thus, the accused persons could not have been prosecuted and tried even under the Penal Code. That is to say the earlier initiation of FIR was not ended on the merits. Offence (*dicta*) refers to the legal characteristics of an offence and not the facts on which it is based. It is true that the Article 35(2) of the Constitution prohibits prosecution and punishment for twice for the 'same offence'. But the offences under the Penal Code are not the same offences as mentioned in the Act of 1973. In these circumstances, we are of view that there is a separate and distinct new criminal offence (*i.e.* separate defining elements) under the Act of 1973 that may be prosecuted without violating the common law double jeopardy prohibition. Therefore, and since the offences for which a first information report [FIR] was initiated earlier under a different legislation are not the 'same offences', the accused persons cannot have the benefit of the doctrine of double jeopardy.

27. Finally, we find more substance in the submissions advanced by the learned prosecutor that the proposed charges deserve to be considered and resolved only at trial, on presentation of evidence. At this stage, we are to concentrate our attention to the allegations and facts disclosed in the Formal Charge as well as the statement of witnesses and documents submitted therewith.

28. In view of the discussion as made above and considering the submissions advanced by both sides, we are of the view that the application seeking discharge of the accused does not have any substantial merit and thus the same is hereby rejected. Conversely, we have found it *prima facie*, particularly from the particulars of facts narrated in the Formal Charge having reasonable grounds to frame charges against accused (1) **Chowdhury Mueen Uddin [absconded]** and (2) **Ashrafuzzaman Khan [absconded]** for the criminal liability that they incurred by allegedly committing the offences as mentioned in section 3(2) of the Act of 1973.

IX. Concluding view

29. Having regards to the submissions advanced by both sides we are of the view that the applications seeking discharge of the accused, having no substantial merit, is hereby rejected.

30. Now we proceed to read out the charges framed. 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 and substantial materials before this Tribunal to frame charges against accused (1) **Chowdhury Mueen Uddin [absconded]** and (2) **Ashrafuzzaman Khan [absconded]** for the offences allegedly committed during the War of Liberation in 1971 as specified under section 3(2) of the Act for which they are alleged to be criminally liable under sections 4(1) and 4(2) of the Act of 1973. The charges are thus framed against them in the following manner.

Charges

We,

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Mia

Judge Md. Shahinur Islam, Member

Of the International Crimes Tribunal -2

hereby charge you, (1) **Chowdhury Mueen Uddin [absconded]** son of late Delwar Hossain Chowdhury and late Deljan Begum of 'Chowdhury Bari' village Chanpur under police station Daganbhuian near Fajilerghat Bazar, district Feni at present 1, Jonson Road, Tottenham, London NJ54JU, UK and (2) **Ashrafuzzaman Khan @ Naeb Ali Khan [absconded]** son of late Md. Ajahar Ali Khan and late Roimunnesa of village Chotovatara, Chiler par under police station Maksudpur district Gopalganj and at present 162-15, Highland: Ave, Apt, 3C Jamaica, New York, 11432, USA as follows:-

Charge No.1

[Event narrated in paragraph 11.1 of Formal Charge]

That on 11 December, 1971 at about 03:00-03:30 am [night following of 10 December, 1971] the 7-8 armed AB men on instruction of you

(1) **Chowdhury Mueen Uddin**, leader of ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **journalist Seraj Uddin Hossain** by forcibly entering into his house at 5, Chamelibag, police station-Paltan, Dhaka, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by an EPRTC minibus and afterwards they killed him, although his dead body could not be found.

Thereby you accused (1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan are hereby charged for ‘abetting’ and ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as crime against humanity as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 2

[Event narrated in paragraph 11.2 of Formal Charge]

That on 11 December, 1971 at about 04:00-04:30 am a gang of 8-10 armed Al-Badar men led and being accompanied by you (1) **Chowdhury Mueen Uddin**, leader of ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **Syed Nazmul Haque** , the chief reporter of PPI and staff reporter of Columbia Broadcasting Services on gun point by forcibly entering into his rented house at 90, Purana Paltan, Dhaka, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by an EPRTC minibus and afterwards they killed him, although his dead body could not be found.

Thereby you accused (1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan are hereby charged for participation by ‘abetting’ and for ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as **crime against humanity**’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 3

[Event narrated in paragraph 11.3 of Formal Charge]

That on 11 December, 1971 at about 06:00-06:30 am a gang of 5/6 armed Al-Badar men on instruction of you (1) **Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **A.N.M Golam Mostafa**, the then chief reporter of The Daily Purbadesh by forcibly entering into his rented house at 89/C, Gopibag, Dhaka, pretending to take him to the office of Daily Purbadesh, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by a minibus and afterwards they killed him, although his dead body could not be found.

Thereby you accused (1) Chowdhury Mueen Uddin **and accused** (2) Ashrafuzzaman Khan **are hereby** charged for ‘abetting’ and ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as **crime against humanity**’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed

civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 4

[Events narrated in paragraph 11.4 of Formal Charge]

That on 12 December, 1971 at noon a gang of armed Al-Badar men on instruction of you (1) **Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **Nizam Uddin Ahmed**, the then General Manager of PPI and reporter of BBC by forcibly entering into his rented house at 12/C, Rokonpur, Kalta Bazar, Dhaka, pretending to take him to the office of Al-Badar, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by a minibus and afterwards they killed him, although his dead body could not be found.

Thereby you accused (1) Chowdhury Mueen Uddin **and accused (2) Ashrafuzzaman Khan** are hereby charged for ‘abetting’ and ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as crime against humanity’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 5

[Event narrated in paragraph 11.5 of Formal Charge]

That on 13 December, 1971 at noon a gang of armed Al-Badar men led and accompanied by you (1) **Chowdhury Mueen Uddin**, leader of

ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **Selina Parveen**, Editor of The Daily Shilalipi, by forcibly entering into her rented house at 15, New Circular Road, Dhaka on gun point, pretending to take her to the secretariat office of Al-Badar, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by a minibus and afterwards they killed her. On 17 December 1971 her dead body was recovered from the mass grave at ‘Rayer Bazar’, outskirts of Dhaka city.

Thereby you accused **(1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan** are hereby charged for participation by ‘abetting’ and for ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as **crime against humanity**’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 6

[Events narrated in paragraph 11.6, 11.7, 11.8, 11.9, 11.10, 11.11 of Formal Charge]

That on 13 December, 1971 in between 08:00 -09:45 am a gang of 5/6 armed Al-Badar men led and accompanied by you **(1) Chowdhury Mueen Uddin**, leader of ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **(1) Professor Gias Uddin Ahmed (2) Professor Dr. Serajul Haque Khan (3) Dr. Md. Mortuja (4)Dr. Abul Khayer (5)Dr. Foyzul Mohiuddin (6) Professor Rashidul Hassan (7) Professor Anwar Pasha (8)Professor Dr. Santosh Bhattacharjee**, by forcibly

entering into their respective residences situated in the campus of the university of Dhaka on gun point and in conjunction with the same event, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought them to Mirpur killing field unknown place by a microbus and afterwards they killed them . After 16 December 1971, dead body of Professor Gias Uddin Ahmed, Dr. Md. Mortuja, Dr. Abul Khayer, Professor Rashidul Hassan, Professor Anwar Pasha, and Professor Dr. Santosh Bhattacharjee could be identified and recovered from Mirpur mass grave. Professor Gias Uddin Ahmed was found listed as one of targets of ‘intellectuals killing’ in a diary recovered from the house [350, Nakhlapara, Dhaka] of you accused Ashrafuzzaman Khan, after independence. Dead body of the rest of martyr Professors could not be traced even.

Thereby you accused (1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan are hereby charged for participation by ‘abetting’ and for ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as crime against humanity’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against the unarmed civilians belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 7

[Event narrated in paragraph 11.12 of Formal Charge]

That on 14 December, 1971 in between 12:00 to 01:00 P.M a gang of 7/8 armed Al-Badar men led and accompanied by you (1) **Chowdhury Mueen Uddin**, leader of ICS , member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **Professor Mofazzal Haider Chowdhury**, University of Dhaka, by forcibly entering into his

residence within the university residential campus of Dhaka University and the victim professor could recognize you accused Chowdhury Mueen Uddin, student of Bengali department of the university when his brother removed the scarf from his face. You the accused persons and the gang of armed Al-Badar men you led then forcibly brought Professor Mofazzal Haider Chowdhury, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by an EPRTC minibus and afterwards you and your gang killed him. Professor Mofazzal Haider Chowdhury was found listed as one of targets of 'intellectuals killing' in a diary recovered from the house [350, Nakhlapara, Dhaka] of you accused Ashrafuzzaman, after independence. Dead body of the martyr Professor could not be traced even.

Thereby you accused (1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan are hereby charged for participation by 'abetting' and for 'complicity' to the commission of offence of '**abduction**' as crime against humanity or in the alternative for commission of the offence of '**extermination**' as crime against humanity' as part of planned and systematic attack and large scale killing of civilians belonging to 'intellectual group' or in the alternative for commission of the offence of '**murder**' as crime against humanity committed against unarmed civilian belonging to 'intellectual group' as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 8

[Event narrated in paragraph 11.13 of Formal Charge]

That on 14 December, 1971 at about 01:00-01:30 noon a gang of 3-4 armed Al-Badar men on instruction of you (1) **Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and 'operation-in-charge' of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and 'chief executor' of Al-Badar abducted **Professor A.M Munir Chowdhury**, Bengali department, University of Dhaka, by forcibly entering into his paternal residence at 20 Central Road, Hatirpul, Dhaka, on gun point, in furtherance of

common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by an EPRTC minibus and afterwards you and your gang killed him. After independence Professor A.M Munir Chowdhury was found listed in a diary recovered from the house [350, Nakhlapara, Dhaka] of you accused Ashrafuzzaman Khan as one of targets of ‘intellectuals killing’. Dead body of the martyr Professor could not be traced even.

Thereby you accused **(1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan** are hereby charged for ‘abetting’ and ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as **crime against humanity**’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 9

[Event narrated in paragraph 11.14 of Formal Charge]

That on 14 December, 1971 at about 06:00 pm a gang of 5/6 armed Al-Badar men led and accompanied by you **(1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **journalist Shahidullah Kaiser**, the then joint editor of The Daily Sangbad, by forcibly entering into his paternal residence at 29, B.K Ganguli Lane, Koyettuli, Dhaka, on gun point, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by a minibus and afterwards you and your gang killed him. Dead body of the martyr journalist could not be traced even.

Thereby you accused **(1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan** are hereby charged for participation by ‘abetting’ and for ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of ‘**extermination**’ as **crime against humanity**’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 10

[Event narrated in paragraph 11.15 of Formal Charge]

That on 15 December, 1971 at about 02:00-03:00 pm a gang of 2/3 armed Al-Badar men led and accompanied by you **(1) Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and **(2) Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar abducted **Dr. Md. Fazle Rabbi**, Professor, Clinical Medicine & Cardiology, by forcibly entering into his residence at 75, Jalpaiguri Lane, Siddeswari, Dhaka, on gun point, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to Al-Badar headquarter camp at Mohammad Physical Training College by a minibus and afterwards you and your gang took him to Rayer Bazar mass grave and killed him. After independence, on 18 December dead body of martyr doctor could be identified and recovered from the mass grave at ‘Rayer Bazar’, outskirts of Dhaka city.

Thereby you accused **(1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan** are hereby charged for participation by ‘abetting’ and for ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the

offence of ‘**extermination**’ as **crime against humanity**’ as part of planned and systematic attack and large scale killing or in the alternative for commission of the offence of ‘**murder**’ as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Charge 11

[Event narrated in paragraph 11.16 of Formal Charge]

That on 15 December, 1971 at about 03:30-04:00 pm a gang of armed Al-Badar men on instruction of you (1) **Chowdhury Mueen Uddin**, leader of ICS, member of Al-Badar high command and ‘operation-in-charge’ of Al-Badar and (2) **Ashrafuzzaman Khan**, member of Al-Badar high command and ‘chief executor’ of Al-Badar forcibly entered into the house of Dr. Alim Chowdhury at 29/1 Purana Paltan [1st floor] Moulana Mannan, an organiser of the Al-Badar force used to reside on the ground floor of the building. Moulana Mannan did not respond despite seeking help from him and then 03 armed Al-Badar forcibly abducted **Dr. Alim Chowdhury**, on gun point, in furtherance of common plan and design of killing targeting the listed intellectuals with intent to cripple the Bengali nation and brought him to unknown place by a minibus and afterwards you and your gang killed him. After independence, on 18 December dead body of martyr Dr. Chowdhury could be identified and recovered blind folded together with numerous martyrs from the mass grave at ‘Rayer Bazar’, outskirts of Dhaka city. Later on Shyamoli Nasreen Chowdhury, wife of martyr came to know that the gang of Al-Badar was led by Chowdhury Mueen Uddin and Ashrafuzzaman Khan

Thereby you accused (1) Chowdhury Mueen Uddin and accused (2) Ashrafuzzaman Khan are hereby charged for ‘abetting’ and ‘complicity’ to the commission of offence of ‘**abduction**’ as crime against humanity or in the alternative for commission of the offence of

‘extermination’ as crime against humanity’ as part of planned and systematic attack and large scale killing of civilians belonging to ‘intellectual group’ or in the alternative for commission of the offence of **‘murder’** as crime against humanity committed against unarmed civilian belonging to ‘intellectual group’ as specified in section 3(2) (a) (g)(h) of the Act of which are punishable under section 20(2) read with section 3(1) of the Act for which you the accused persons have incurred liability under section 4(1) and 4(2) of the Act.

Thus you the accused persons have been indicted as above for committing the offences under section 3(2)(a)(g)(h) which are punishable under section 20(2) read with section 3(1) of the Act.

The aforesaid charges of crimes against humanity and also for complicity to the commission of such crimes described under section 3(2)(a)(g) (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 in absentia.

The aforesaid charges are read out in the open Court but the accused persons could not be asked whether they plead guilty or not as they are absconding.

Let **15.7.2013** be fixed for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The learned state defence counsels are directed to submit a list of witnesses, if any, along with documents which the defence intends to rely upon, as required under section 9(5) of the Act by the next date fixed.

Justice Obaidul Hassan, Chairman

Justice Md. Mozibur Rahman Mia, Member

Judge Md. Shahinur Islam, Member