



Working Group on Arbitrary Detention

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Dear Mr. Cadman,

I would like to refer to the sixty-first session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion No. 66/2012 (Bangladesh) regarding a case submitted by your organization.

This Opinion will be reproduced in the Working Group's annual report to the Human Rights Council.

Yours sincerely,

  
Miguel de la Lama  
Secretary

Working Group on Arbitrary Detention

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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012****No. 66/2012 (Bangladesh)****Communication addressed to the Government on 14 September 2012**

**Concerning Messrs. Azharul Islam, Ghulam Azam, and Mir Quasem Ali.**

**The Government has not replied to the communication.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (Category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

## Submissions

### *Communication from the source*

3. Mr. Azharul ISLAM (hereinafter Mr. Islam), of Bangladeshi nationality, is the acting Secretary-General of Bangladesh Jamaat-e-Islami and Director of Bangladesh Publications Ltd.

4. Mr. Islam was arrested on 19 September 2011 by the Dhaka Metropolitan Police without a warrant or other decision by a public authority in relation to five cases in the regular courts of Bangladesh: Paltan P.S. Nos. 18, 19, 20, 34 and 35. On 20 March 2012, six months following his arrest, he obtained bail in all five cases.

5. The source informs that Mr. Islam was immediately re-arrested upon release, at the gate of the prison, on 20 March 2012, by the police without a warrant or other decision by a public authority.

He appeared before the Chief Metropolitan Magistrate of Dhaka on 21 March 2012 in relation to six new cases against him in the regular courts of Bangladesh: Paltan P.S. No. 5(6)11, Paltan P.S. No. 46(6)10, Paltan P.S. No. 8(7)10, Ramna P.S. No. 17(9)10, Motijheel P.S. No. 32(11)10 and Motijheel P.S. No. 33(11)10.

6. According to the source, Mr. Islam was informed that upon his release on bail from these further charges he would be immediately re-arrested in the same manner as on 21 March 2012.

A Writ Petition (No. 1638 of 2012) was lodged on his behalf challenging the actions of the governmental authorities in re-arresting him/threatening to re-arrest him without due process from the prison gate. The High Court Division issued a rule on 13 June 2012. The Writ Petition is reportedly now pending hearing.

7. According to the source, Mr. Islam was released again on 16 August 2012. Due to the rule pending in Writ Petition No. 1638 of 2012, the authorities were compelled to release Mr. Islam without re-arresting him. He was followed from the jail gate to his residence by approximately 20 police officers, who remained at his residence, installed CCTV and restricted entry and exit of people to the property (including that of Mr. Islam). In fact, Mr. Islam was not allowed to perform his Friday or Tarawi prayers at the Mosque; he was not allowed to visit relatives nor to have his relatives visit him; he was not allowed to carry out a CT and MRI scan as recommended by the doctor in prison following a stroke in May 2012. Effectively, he was under house arrest since his release from prison on 16 August 2012.

8. The source informs that on 22 August 2012, Mr. Islam was arrested a third time at his residence and taken to the Detective Branch office at the police station on Minto Road where he was kept until produced before the International Crimes Tribunal, Bangladesh (hereinafter the Tribunal) on 23 August 2012.

The Tribunal heard Mr. Islam's application for bail on 23 August 2012. Arguing against it, the Prosecution submitted that Mr. Islam interfered with the investigation and contacting terrorist groups in Bangladesh and abroad.

9. According to the source, his defence counsel submitted that there is no evidence or substantial risk that he will tamper with evidence, interfere with witnesses or abscond. He lawfully appeared and obtained bail in all eleven cases against him.

It was also submitted that the allegations made against him under section 3(2) of the International Crimes (Tribunal) Act 1973 (hereinafter the Act or ICTA) are false and that his medical condition is such that he must be allowed proper medical care. He is 60 years old, suffers from high blood pressure, is diabetic (for 20 years), had a stroke in May 2012, and is in need of a CT and MRI scan (as recommended by the prison doctor). It was submitted by his defence counsel that these symptoms have all been aggravated by the denial of medical attention or relief whilst in jail and that he is in danger of being similarly neglected if not bailed a third time.

10. His defence counsel submitted that there is evidence that Mr. Islam was tortured whilst in prison and police custody and that he suffers from pain to his spine and legs and finds it difficult to retain his balance. It was further submitted that he has offered condition of bail to minimize the risk of absconding, interference with investigation or committing further crimes.

11. The source reports that Mr. Islam's application for bail was refused on 26 August 2012. In denying bail, the Tribunal Chairman stated that the Tribunal had failed to find sufficient reason why he should be released on bail. The source submits that this effectively reversed the burden of proof which falls on the Prosecutor. Indeed, it is for the Prosecutor to establish relevant and sufficient grounds for withholding bail.

12. The source also submits that following the exhaustion of procedural options for custody in the regular courts, the authorities had Mr. Islam arrested for alleged crimes under the jurisdiction of the Tribunal. Thus, the Government has succeeded in keeping Mr. Islam in prison despite the previous decisions by the High Court Division to grant bail in all eleven cases.

13. In addition, the source points to the fact that Mr. Islam is Director of Bangladesh Publications Ltd., which owns and operates the Daily Sangram and Daily Rising Sun newspapers. According to the source, it was commonly known prior to his arrest that his newspapers have been warned by the Tribunal for reporting and criticising the proceedings. The source thus submits that the detention of Mr. Islam is an attempt to prevent any opposition voice in Bangladesh.

14. Mr. Ghulam AZAM (hereinafter Mr. Azam), born on 7 November 1922, of Bangladeshi nationality, is a professor and former Ameer of the Bangladeshi Jamaat-e-Islami political party.

15. The source informs that on 9 January 2012 the Tribunal took cognizance of the offences under sections 3(2), 4(1) and 4(2) of the Act against Mr. Azam, stating that the Prosecution had established a prima facie case as required under Rule 29(1).

He was subsequently arrested on 11 January 2012 on charges of committing crimes against humanity and peace, genocide and war crimes during the 1971 Bangladesh Independence War, following the issue of a warrant for his arrest by the Tribunal.

16. The same day, the Tribunal refused his application for bail and he was ordered to be detained at Dhaka Central Jail. However, after three hours he was sent to Bangabandhu Sheikh Mujib Medical University (BSMMU) hospital for a medical check-up due to his age (89 years). He remains in detention at Dhaka Central Jail and intermittently at the BSMMU hospital.

17. On 15 February 2012, the Chief Prosecutor of the Tribunal made an application to the Tribunal for presenting formal charge against Mr. Azam as per section 9(1) ICTA and rule 18 of Rules of Procedure framed under section 22 of the said Act.

18. On 23 February 2012, the Tribunal rejected another bail application, having found insufficient reasons to enlarge the accused on bail. It was argued by the Prosecution that the Tribunal found a *prima facie* case against the accused, that treatment for his health conditions is being properly seen to in his cell at the BSMMU and that his physical condition is not as poor as his defence counsel presents.

19. According to the source, Mr. Azam's defence counsel had presented strong legal and medical reasons in favour of bail and offered conditions, including that there are no reasonable grounds for believing that he has committed offences as alleged as the Prosecution failed to show a *prima facie* case against him, that there is no substantial risk that he will tamper with evidence as the investigation is closed and he has been formally charged, that he must receive proper medical care and daily assistance, which are not possible to be given in the prison cell in BSMMU, and that there is no substantial risk of Mr. Azam absconding. The defence counsel further submitted that a number of conditions for bail were offered and pointed to the presumption in favour of bail under national and international law to prevent individuals from being arbitrarily deprived of liberty and to ensure that the period of detention following arrest is not unreasonable.

20. In denying bail, the Tribunal Chairman reportedly stated that the Tribunal had failed to find any reason why he should be released on bail, thereby reversing the burden that the Prosecutor was required to establish relevant and sufficient grounds for withholding bail. In particular, the Tribunal found that Mr. Azam was not sick enough to be released on bail.

21. With regard to the medical condition of Mr. Azam, the source informs that he is 89 years old and consequently suffers from a number of age-related medical complications and ailments including hypertension, diabetes mellitus, osteoarthritis in both knee joints, cervical and lumbar spondylitis with radiculopathy, an enlarged prostate, electrolytes imbalance, loss of vision in the right eye, back pain and pain in his neck and knees.

22. The source also informs that Mr. Azam was examined by a medical board on 5 November 2011 where he was advised absolute bed rest, a continuation of his physiotherapy treatment and restrictions on physical activity, use of a lumbar corset and walking with elbow sticks. On 13 February 2012, following his arrest, he was examined by another medical board; an x-ray revealed several complications with his bones as a result of his old age and an ultra sonogram showed that he had numerous stones in his gallbladder.

23. Furthermore, the source informs that his health problems call for special dietary requirements which must be strictly followed at all times. It was submitted that the standard of food is unsuitable at the prison hospital. His wife's application to the prison authority, requesting to be able to prepare home-cooked food according to his dietary needs, was refused. The accused has been losing weight, is not able to attend the required physiotherapy sessions and, with the absence of any assistance, injured himself on 25 January 2012 when he slipped on the floor of the bathroom and fell on his knees.

24. On 7 June 2012, the Tribunal rejected Mr. Azam's motion for a review of the charges. It further rejected a petition for the recusal of the Tribunal Chairman and, in the alternative, for the trial to be referred to the Second Tribunal, due to the Chairman's prior involvement in the People's Court that held a mock trial convicting Mr. Azam and as part of a lawyer's forum that called for the execution of the verdict of the People's Court, i.e. the death penalty.

25. The source reports that the trial against Mr. Azam has recently started and is currently in the phase of the prosecution case. The first prosecution witness gave evidence against Mr. Azam and was cross-examined for four days (1, 3, 4 and 5 July 2012). On 5 July 2012 the Tribunal issued an order directing the defence counsel to complete cross examination of prosecution witness No. 1 within 1 (one) session of another day under Rule 46A of the International Crimes Tribunal Rules of Procedure 2010. However, the cross-

examination remains incomplete and the Tribunal has given the prosecution witness liberty to return at his convenience for the completion of cross-examination. Prior to departure of the prosecution witness, the Chairman reportedly summoned the lead defence counsel, Chief Prosecutor and first prosecution witness into his Chambers. Although the meeting was *inter-partes*, the inappropriateness of the meeting was demonstrated by permitting the prosecution witness to query the defence counsel as to why the cross-examination was taking so long. The prosecution witness has not returned to the Tribunal since that time.

26. The source further reports that the cross-examination of prosecution witness No. 2 began on 29 July and ended on 31 July 2012. Proceedings have been adjourned until 10 September for the deposition of prosecution witness No. 3 and one of the witnesses on the seizure list, following which the Prosecution will not be calling any other witnesses and call the Investigation Officer. According to the source, there is serious concern that the Tribunal will take judicial notice of the bulk of the evidence, including the hearsay, filed by the Prosecution so as to bypass the difficulty in proving the nexus between Mr. Azam's speeches and the actual crimes committed on the ground.

27. Mr. Mir Quasem ALI (hereinafter Mr. Ali), born on 31 December 1952, of Bangladeshi nationality, is leader of the Bangladeshi political party Jamaat-e-Islami, head of Diganta Media Corporation, director of an Islami bank, member of Ibn Sina Trust, and director of the non-governmental organization Rabita al-Alam al-Islami.

28. According to the source, Mr. Ali was originally arrested on 17 June 2012 in one of his company offices in Motijheel by the Detective Branch of the Dhaka Metropolitan Police, and he was reportedly taken to Dhaka Central Jail under heavy security. The source informs that he was arrested on the basis of a warrant issued by the Tribunal on allegations of having committed crimes against humanity during the 1971 Bangladesh Independence War.

29. On 17 June 2012, the Chief Prosecutor of the Tribunal made an application to the Tribunal for the arrest of Mr. Ali under Rule 9(1) of the Rules and Procedure of the Tribunal for crimes committed under Section 3(2) of the ICTA.

In the order of arrest, the Tribunal referred to Rule 34(1) of its Rules of Procedure that permitted the law enforcement authorities to produce an accused before the Tribunal within 24 hours of arrest. However, the Tribunal reportedly did not issue an order for custody until 19 June 2012. According to the source, this indicates that once Mr. Ali was produced before the Tribunal he fell within its jurisdiction and considering that no valid detention order was issued until 19 June, his detention during that period was unlawful.

30. Mr. Ali was reportedly brought promptly before the Tribunal, but the Chairman of the Tribunal refused to consider the question of bail and consequently he was taken into custody without any lawful order for custody, just the warrant issued by the Tribunal. The question of bail was not considered until 19 June 2012, two days after his arrest. Mr. Ali applied for bail on the grounds that he was being arbitrarily detained. He submitted further voluntary conditions in order to negate the risk of absconding or interfering with the investigation or Prosecution witnesses or the re-occurrence of any crimes.

31. In denying bail, the Tribunal Chairman allegedly stated that the Tribunal had failed to find any reasons why Mr. Ali should be released on bail; thereby reversing the burden that the Prosecutor was required to establish relevant and sufficient grounds for withholding bail. In particular, the Tribunal held that Mr. Ali was not sick enough to be released on bail. In rendering the decision, the Tribunal Chairman acknowledged that the legal framework did not permit bail in such cases, but the Rules of Procedure had been amended to allow bail and the Tribunal had done so in one case.

32. Following the refusal to grant bail, the Prosecutor filed a request for Mr. Ali to be remanded in the custody of the Investigation Authority for the purpose of the interrogation

under Section 11(5) ICTA. According to the source, the defence filed a request for counsel to be present during interrogation; this was denied. The defence then filed a request to have privileged communication prior to the interrogation; this was also denied. The Tribunal subsequently issued an order granting the Prosecutor's request and ordering the Prosecutor to report on the progress of the investigation by 12 August 2012.

33. On 12 August, the defence submitted two applications. The Tribunal refused to hear either application that day, though they were reportedly both urgent. One application related to transportation of Mr. Ali by suitable vehicle or ambulance and the other to direct the jail authority to bring him to BIRDEM Hospital to seek medical treatment.

34. According to the source, the Prosecutor submitted the progress report the same day and prayed for further time to complete the investigation. The defence were not allowed to receive or see a copy of the report, though they have been allowed to do so in other cases before the Tribunal. The Tribunal directed the Prosecution to complete the investigation by 27 September 2012.

35. The source also points to the fact that Mr. Ali runs an opposition media agency that comprises a newspaper and television station. It was commonly known prior to his arrest that his television station had commissioned the production of a documentary that would be critical of the Tribunal and its procedures. Given that one of the grounds of his arrest was that he was allegedly campaigning internationally against the Tribunal, the source submits that his detention is an attempt to prevent any opposition voice in Bangladesh.

36. Mr. Ali is currently being held in the Dhaka Central Jail and has according to the source not yet been charged with any crimes under section 3 ICTA.

37. The source argues that in all the above-mentioned cases, there has been the total or partial non-observance of the international norms relating to the right to a fair trial before an independent and impartial tribunal which are of such gravity as to give the deprivation of liberty an arbitrary character. Of particular concern in this regard is the complete lack of privileged access to counsel.

38. The source first points to alleged structural deficiencies in the ICTA. According to the source, section 3(1) ICTA allows for substantive criminal law to be applicable retroactively, which would run contrary to Bangladesh's own constitution under Section 35(1) as well as Article 11(2) of the Universal Declaration of Human Rights (UDHR). The source alleges that the ICTA is currently being sheltered from judicial review following the amendment of the Bangladesh Constitution to include Article 47(3). It reads as follows:

"no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed force or defence or auxiliary forces or who is prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to, any of the provisions of this Constitution".

39. The source also indicates that the amended Article 47A (1) of the Constitution removes guaranteed constitutional rights to those charged under the ICTA, which is allegedly contrary to Article 7 UDHR and Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

40. The source further argues that the number and weight of the legislative issues within the ICTA which are contrary to international fair trial standards, amount to the continued arbitrary detention of all the accused.

According to the source, the Tribunal has, *inter alia*, refused to order the disclosure of investigative reports to the defence despite the Judges having perused the same prior to

issuing key orders and also prevented the defence from cross-examining Prosecution witnesses on previous inconsistent statements.

The source further points to a complete absence of equality of arms and reports that international conventions and treaties have been ruled to not apply, that investigations are conducted in a shroud of secrecy and the defence are prevented access to investigative files, and that interrogations are conducted in the absence of counsel.

41. Reportedly, all the individuals subject to this communication have applied for bail on the grounds that they were being arbitrarily detained without charge during pre-trial proceedings.

They submitted voluntary conditions in order to negate the risk of absconding or interfering with the investigation or Prosecution witnesses or the re-occurrence of any crimes.

These included surrendering their passport to competent authorities, residing at a given address and reporting to local authorities, abstaining from travel without prior permission.

They also offered a surety for an agreed amount as a condition for bail.

In relation to all accused, the Tribunal has repeatedly refused bail applications on the basis that their ill-health was not sufficiently serious to justify being released on bail and also on the grounds that bail was a privilege that they were not entitled to in such a case.

The source considers that their clients' detention is unreasonable and unnecessary in contravention of Article 9(1) and 9(3) ICCPR.

42. In light of the foregoing, the source submits that the continued pre-trial detention of Messrs. Islam, Azam and Ali is arbitrary as it is in violation of minimal guarantees as enshrined in the right to a fair trial and access to justice.

#### *Response from the Government*

43. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group.

44. Despite the absence of any information from the Government, the Working Group considers it is in the position to render its opinion on the detentions of Messrs. Azharul Islam, Ghulam Azam, and Mir Quasem Ali in conformity with paragraph 16 of its methods of work.

#### **Discussion**

45. The Government opted not to rebut the allegations submitted by the source.

46. In regard to the allegations related to the applications for bail, the Working Group recalls that, pursuant to article 9.3 of the ICCPR, it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings.

As emphasised by the Human Rights Committee, pre-trial detention should be an exception<sup>1</sup> rather than the rule.

47. In the cases under consideration the main reason for denial of bail was the gravity of the offences with which the individuals have been charged (crimes against humanity, war crimes, genocide).

In this regard, it may be noted, for comparison, that the Rules of the UN-backed Extraordinary Chambers in the Courts of Cambodia (ECCC), the subject-matter jurisdiction

<sup>1</sup> Human Rights Committee General Comment No. 8: Article 9 (Right to Liberty and Security of Persons), para. 3.



of which are genocide and crimes against humanity, do provide for possibility of the provisional release, including bail.<sup>2</sup>

48. It is true that the Working Group in its Deliberation No. 6 found that a judge may legitimately allow the exception (detention) to prevail over the rule (release) "in the case of international crimes or, in national legal systems, of extremely grave crimes".<sup>3</sup>

However, the Working Group also concurs with the European Court of Human Rights position that the seriousness of the offence "can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the *accused's release would actually prejudice public order*. In addition, *detention will continue to be legitimate only if public order remains actually threatened*."<sup>4</sup>

49. In any case, when a bail application is considered by the court, the prosecution shall have the burden of proving that the accused would not appear before the court if released, and that he poses a danger to victims, witnesses or other persons.

50. Indeed, in the international criminal tribunals the burden was shifted to the accused to show exceptional circumstances to qualify for provisional release.

This deviation from the requirements of the international human rights instruments has been justified mainly by lack of any power, such as a police force, in the tribunals to execute their own arrest warrants and absence of any control over the area in which the accused would reside if released.<sup>5</sup>

However, these circumstances, inherent to the international institutions, are irrelevant to the domestic Bangladesh's international war crimes tribunal.

51. In the case under consideration, the Tribunal effectively reversed the burden of proof from the prosecution to the accused and made the pre-trial release on bail the exception rather than the rule.

It is because of this flawed approach that the court denied the bail 90 years old Ghulam Azam, and 60 years old Quasem Ali and Azharul Islam on the basis that they are not sick enough to be released on bail and that the court failed to find any reasons why they should be released on bail.

52. In any event, when a bail application is considered by the court, it is the prosecution or the relevant investigative authorities that have the burden of proving, in particular, that the accused would not appear before the court if released, and that he poses a danger to victims, witnesses or other persons, etc, regardless of the gravity of the offence.<sup>6</sup>

53. Thus, Messrs. Islam, Azam, and Ali have been deprived of liberty in violation of the principle that release must be the rule and provisional detention the exception as provided for in article 9 of the UDHR and article 9 of the ICCPR.

The case, therefore, falls into category III of the categories applied by the Working Group.

<sup>2</sup> See Rules 64, 65, and 82.2 of the ECCC Internal Rules.

<sup>3</sup> Deliberation No. 6, Legal Analysis of Allegations against the International Criminal Tribunal for the Former Yugoslavia, (Report of the Working Group on Arbitrary Detention, E/CN.4/2001/14, para. 33.

<sup>4</sup> See *Tomasi v. France*, no. 12850/87, ECtHR, 27 August 1992, para. 91 (emphasis added).

<sup>5</sup> See, for instance, *Delalić et al.*, Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalić, Case No. IT-96-21-T, T. Ch., 25 September 1996, para. 20; *Tolimir et al.*, Decision Concerning Motion for Provisional Release of Milan Gvero, Case No. IT-04-80-PT, T. Ch., 19 July 2005, para. 8; *Brđanin and Talić*, Decision on Motion by Momir Talić for Provisional Release, Case No. IT-99-36-PT, T. Ch., 28 March 2001, para. 18; *Brđanin and Talić*, Decision on Motions Radoslav Brđanin for Provisional Release, Case No. IT-99-36-PT, T. Ch., 25 July 2000, para. 18.

<sup>6</sup> See, for instance, the ECCC Pre-Trial Chamber decision of 30 April 2010 in the *Sary et al.* case.

54. As to the allegations on violations of the right to cross-examination, the Working Group notes that the information provided by the source in this regard is not sufficient. There is no information on whether or not the trial in cases of Messrs. Islam and Ali have started yet. In the Mr. Azam's case, the applicant did cross-examine the first prosecution witness for four days and the next witness for several days. Indeed, the right to cross-examine a witness is subject to the duty of Trial Chamber to ensure a fair and expeditious trial and its exercise is subject to the control of the Chamber.<sup>7</sup> Accordingly, in the absence of the necessary details of alleged violation of the right, the Working Group is unable to reach a conclusion on these allegations.

55. In regard to the allegations that Messrs. Islam, Azam and Ali have been deprived of the right to communicate with counsel before and during the interviews conducted by the investigators of the Tribunals, the Working Group found that Mr. Ali's counsel was not allowed to be present at the interview and consult his client as he was permitted to be present only in the adjacent room. The Working Group does not possess sufficient information in this regard concerning the alleged violations in the particular cases of Messrs. Islam and Azam.

56. Concerning the allegations that the accused and their counsel were not given access to the evidence collected by the investigation, the source has not provided information related to specific violations in the individual cases of Messrs. Islam, Azam and Ali.

### Disposition

57. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Messrs. Islam, Azam, and Ali is arbitrary and constitutes a breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, falling into category III of the categories applicable to the cases submitted to the Working Group..

58. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Messrs. Islam, Azam, and Ali and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

59. The Working Group considers that, given the circumstances of the case, the appropriate remedy would be re-consideration of Messrs. Islam, Azam, and Ali's applications for bail in accordance with the relevant provisions of the international human rights law.

<sup>7</sup> In this regard, the Working Group concurs with the approach of the UN International Criminal Tribunals. See, for instance, *Martić*, Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, together with Associated Exhibits, from Evidence, Case No. IT-95-11-T, 9 June 2006, para. 56; *Delalić et al.*, Decision on the Motion of the Joint Request of the Accused Persons Regarding the Presentation of Evidence, Dated 24 May 1998; Case No. IT-96-21-T, 12 June 1998, paras. 32-33.

60. In accordance with Article 33(a) of the Revised Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture or cruel, inhuman treatment to the Special Rapporteur on torture for appropriate action.

*[Adopted on 23 November 2012]*

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