

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Keywords: Bangladesh – Caretaker Government – MiG-29 Corruption Trials – Awami League – Judiciary – Corruption

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Questions

- 1. Please provide key dates in the Bangladeshi government's MiG-29 jet fighter aircraft purchase and later corruption trials.**
- 2. Please provide information regarding the current status of any legal action, in particular against former Ministry of Defence officials such as Syed Yusuf Hossain and Hossain Serniabat. Please provide information confirming that the charges against President Sheikh Hasina have lapsed or have been formally dropped.**
- 3. Do reports confirm that charges against Brigadier General (retired) Iftekhar-Ul-Bashar and former Ministry of Defence Deputy Secretary Hasan Mahmood Delwar were dropped for lack of evidence?**
- 4. Please provide any other relevant information, for example the profile of the MiG-29 corruption case or public comment on its future prospects.**

RESPONSE

- 1. Please provide key dates in the Bangladeshi government's MiG-29 jet fighter aircraft purchase and later corruption trials.**

9 February 1999 – purchase of MiG-29 aircraft

“On February 9, 1999, eight MiG-29 fighter planes were procured for Bangladesh Air Force during Hasina's tenure in line with the technical assistance deal signed between Bangladesh and Russia” (‘Hasina Faces Trial: HC rejects appeal to quash MiG case’ 2007, *Bangladesh News*, 7 September <http://www.bangladeshnews.com.bd/2007/09/07/hasina-faces-trial-hc-rejects-appeal-to-quash-mig-case/> – Accessed 13 March 2009– Attachment 1).

- **11 December 2001 – Bureau of Anti-Corruption registers MiG-29 corruption case**
 “Abdullah Al Zahid, an official of the now defunct Bureau of Anti-Corruption (Bac), filed the MiG-29 purchase case on December 11, 2001 with Tejgaon Police Station accusing five persons including Hasina after the BNP-led four-party alliance came to power” (‘Hasina Faces Trial: HC rejects appeal to quash MiG case’ 2007, *Bangladesh News*, 7 September <http://www.bangladeshnews.com.bd/2007/09/07/hasina-faces-trial-hc-rejects-appeal-to-quash-mig-case/> – Accessed 13 March 2009– Attachment 1).
- **August 2003 – BAC submits chargesheet on frigate purchase**
 On 4 August 2003 *Prothom Alo* reported that: “After a yearlong investigation, the Bureau of Anti-Corruption (BAC) has submitted the chargesheet in the Frigate purchase case. The chargesheet included former Prime Minister Sheikh Hasina, former chief of staff of Bangladesh Navy Real Admiral (retd) Nurul Islam, former chief of staff (operation) of Bangladesh Navy Commodore (retd) AKM Azad, Former director (Naval Plan) Commodore (retd) Haroon-or-Rashid, Chairman of the Trans World Engineering and trading Company Limited Abdul Awal Mintu and Commodore (retd) M Shahabuddin. The case was filed with the Tejgaon Police station on August 7 last year accusing the six for misappropriation of public money and misuse of power in purchasing the DW 2000H Frigate. It was alleged that the purchase made the public exchequer count Tk 511.17 crore in losses. The chargesheet was submitted to the court under Section 409/418/109 of the Penal Code and section 5(2) of the Anti-Corruption Act of 1974. – Prothom Alo, 4 August” (‘Chargesheet in Frigate purchase Case’ 2003, *Daily Times – Law Week*, (source: *Prothom Alo*, 4 August), no.104, 10 August <http://www.thedailystar.net/law/200308/02/week.htm> – Accessed 19 March 2009 – Attachment 3).
- **Early 2003 – MiG-29 manufacturer goes to International Court of Arbitration**
 On 17 July 2003 *Jugantor* reported that: “The primary hearing of Mig 29 case in International Court of Arbitration is going to be started soon. Russian Aircraft Corporation, supplier of Mig 29, filed the case at the beginning of this year as Bangladesh, as per their demand, had postponed payment of instalments without notifying the specific reasons to them. Bangladesh is hopefully contesting in the case. In the meanwhile, both parties has submitted necessary instruments and documents in favour of their demands” (‘Mig 29 case to be heard soon’ 2003, *The Daily Star – Law Week*, (source: *Jugantor*) no.102, 27 July <http://www.thedailystar.net/law/200307/04/week.htm> – Accessed 20 March 2009– Attachment 10).
- **August 2003 – MiG-29 case begins in the International Court of Arbitration**
 On 6 July 2003 *Jugantor* reports that the “[h]earing of the sensational Mig 29 case started in the International Court of Arbitration in Paris. Barrister Rafiqul Haque represented Bangladesh. It may be mentioned that in 1999 Awami League government purchased eight Mig 29 fighter plane from Russian Aircraft Corporation (RAC) paying half of the price. According to the contract rest of the amount was to be paid in instalment within 2006. So far two installations are arrears. And for this the RAC has gone to International Court of Arbitration. The Government claimed that the purchase made a great loss of Bangladesh and as such it has decided to contest in the case” (‘Hearing of Mig 29 case started’ 2003, *Daily Times – Law Week*, (source:

Jugantor, 6 July), no.104, 10 August

<http://www.thedailystar.net/law/200308/02/week.htm> – Accessed 19 March 2009 – Attachment 3).

- **May 2007 – Caretaker Government appeals to have MiG-29 case resumed**

On 29 May 2007 it was reported that: “The government yesterday appealed to the High Court (HC) to resume the hearing of the MiG-29 and frigate purchase graft cases filed against former premier and Awami League chief Sheikh Hasina during the four-party alliance government”. The report also noted that: “The HC in 2003 stayed the proceedings of the cases following Hasina’s appeals”; and that: “Deputy Attorney General Golam Mohammad Chowdhury Alal submitted a petition to a HC bench, consisting Justice Nazrul Islam Chowdhury and Justice Ataur Rahman Khan, for fixing dates for hearing on the two cases” (“Govt appeals to HC to resume MiG-29 case against Hasina’ 2007, *Daily Star*, 29 May

<http://www.thedailystar.net/2007/05/29/d7052901066.htm> – Accessed 20 March 2009 – Attachment 4).

- **May 2007 – High Court resumes MiG-29 corruption case and will hear Hasina’s petitions in August 2007**

On 30 May 2007 *The Daily Star* reported that: “The High Court (HC) [has] set August 1 and 7 for hearing on Awami League (AL) President Sheikh Hasina’s petitions for quashing two graft cases against her regarding the purchase of MiG-29 fighters and a frigate. The decision followed a sudden move by the military-backed interim government to revive the years-old cases against the former premier. Deputy Attorney General Golam Mohammad Chowdhury on Monday petitioned an HC bench for the hearing dates. Earlier in 2003, the HC stayed proceedings of the cases in response to her appeals” (“HC sets hearing dates in Aug for 2 graft cases against Hasina’ 2007, *Daily Times – Law Week*, (source: *Daily Star*, 30 May), no.22, 2 June <http://www.thedailystar.net/law/2007/06/01/week.htm> – Accessed 20 March 2009 – Attachment 5).

- **June 2007 – reports that Hasina faces possible Awami League leadership crisis**

On 2 June 2007 *Bangladesh News* reports that: “The latest crackdown on the AL leaders known to be loyal to the former prime minister has dealt her a severe blow. It has left her pretty much on her own, said sources close to the AL chief”. It is also reported that: “In addition, the government has been gathering information about her bank accounts to find out if there’s been any unusual transaction” (“Hasina faces growing pressure from within, outside party’ 2007, *Bangladesh News*, 2 June <http://www.bangladeshnews.com.bd/2007/06/02/hasina-faces-growing-pressure-from-within-outside-party/> – Accessed 20 March 2009 – Attachment 6).

- **June 2007 – further allegations reported in relation to MiG-29 scandal**

On 13 June 2007 *Bangladesh News* reports that: “Businessman Noor Ali is claimed to have admitted to the joint forces that he gave Tk 1 crore to Awami League (AL) chief and the then prime minister Sheikh Hasina, and three flats to her cousin Sheikh Helal out of the \$ 4 million commission he received from MiG-29 purchase for Bangladesh Air Force during the AL rule”. It is also reported that: “Besides, he gifted Hasina’s son Sajeeb Wajed Joy half of a floor at UTC building at Panthapath in the capital for his IT office, and it was registered in the name of AL leader Kazi Zafarullah, sources quoted him as saying during questioning by the joint forces”. On 14 June it was

reported that: “Two separate extortion cases – one for Tk 5 crore and another for over Tk 2.99 crore – were filed against former prime minister and Awami League (AL) President Sheikh Hasina yesterday” (‘Hasina got Tk 1cr in MiG-29 deal’ 2007, *Bangladesh News*, 13 June <http://www.bangladeshnews.com.bd/2007/06/13/hasina-got-tk-1cr-in-mig-29-deal/> – Accessed 20 March 2009– Attachment 7; ‘Two more extortion cases against Hasina’ 2007, *Bangladesh News*, 14 June <http://www.bangladeshnews.com.bd/2007/06/14/two-more-extortion-cases-against-hasina/> – Accessed 20 March 2009 – Attachment 8).

- **July 2007 – Hasina is arrested**

On 17 July 2007 *The Daily Star* reports that: “The joint forces yesterday arrested Awami League (AL) President Sheikh Hasina at her Dhanmondi residence in the city at around daybreak and later a court sent her to jail on charges of extortion”. According to the report the arrest created some political dissatisfaction: “AL supporters trying to stop the car carrying Hasina, the police charged baton and fired three rounds of rubber bullet to disperse the angry mob”. The report notes that: “In April, the government had tried to force Hasina stay abroad by imposing a ban on her coming home from the UK. But in the face of criticism both at home and abroad, it withdrew the restrictions, leading to a triumphant return for her”; and that: “Political observers see the arrest as a leap towards the "minus-two theory" that seeks to dethrone Hasina and BNP Chairperson Khaleda Zia who have reigned over the country's politics for years” (‘Hasina arrested, sent to sub-jail’ 2007, *The Daily Star*, 17 July <http://www.thedailystar.net/2007/07/17/d7071701011.htm> – Accessed 20 March 2009 – Attachment 9).

- **August 2007 – High Court hears Hasina’s petitions to quash Mig-29 corruption case**

On 9 August 2007 *The Daily Star* reported that: “The High Court (HC) adjourned till August 21 hearing of three appeals by detained former prime minister and Awami League chief Sheikh Hasina for quashing three graft cases against her in connection with the purchase of a frigate and eight MiG-29 fighter aircraft, and setting up Meghnaghat power plant. All the three appeals were on the case list for hearing by an HC bench. The court first took up for hearing Hasina’s appeal for quashing the case concerning MiG-29 purchase. In a packed courtroom, hearing started in the morning and continued till lunch break. At this stage, Hasina’s counsels sought more time to prepare for the cases. And the court adjourned hearing of all the three appeals till August 21. Later, one of Hasina’s counsels Barrister Shafique Ahmed told reporters that they (counsels) read out the first information report (FIR) and charge sheet of the case regarding MiG-29s, and submitted those along other relevant papers to the court. Shafique said they pointed out to the court that some essential ingredients of law are absent in the FIR and charge sheet of the case” (‘Hasina’s appeals: HC adjourns hearings in all 3 graft cases till Aug 21’ 2007, *The Daily Star – Law Week*, no.32, 11 August <http://www.thedailystar.net/law/2007/08/02/week.htm> – Accessed 20 March 2009 – Attachment 11).

- **September 2007 – Anti-Corruption Commission sues Hasina and six others in relation to Khulna power plant contract**

On 3 September 2007 *Bangladesh News* reports that: “The Anti-Corruption Commission (ACC) yesterday sued detained former prime minister and Awami League chief Sheikh Hasina and six prominent personalities in a Tk 3 crore graft

case”. According to the report: “ACC Deputy Director Sabbir Hasan lodged the case with Tejgaon Police Station complaining that Hasina and the six others through mutual understanding and use of influence helped a foreign company and its local partners win a deal for setting up a barge-mount 100MW power plant in Khulna depriving the lowest bidder” (‘Tk 3cr graft case against Hasina’ 2007, *Bangladesh News*, 3 September <http://www.bangladeshnews.com.bd/2007/09/03/tk-3cr-graft-case-against-hasina> – Accessed 20 March 2009 – Attachment 12).

- **September 2007 – High Court turns down Hasina’s petitions and admits the Caretaker Government’s application to revive the MiG-29 corruption case**
On 6 September 2007 the *Indo-Asian News Service* reported that: “The Dhaka High Court Thursday turned down [Hasina’s] petition for quashing the case and admitted the government’s application to resume the trial that had been held in abeyance after a high court order six years ago”. It was also noted that: “Former army chief Lt Gen (retd) Mustafizur Rahman, ex air force chief Air Marshal (retd) Jamal Uddin Ahmed, retired defence secretary Syed Yusuf Hossain, Air Commodore (retd) Mirza Akhtar Maruf, retired defence joint secretary Mohammad Hossain Serniabat and businessman Noor Ali are also named in the charge sheet in the case”. On 7 September 2007, it was reported that: “Hasina’s counsel said they would move to the Appellate Division of the Supreme Court (SC) seeking stay on the HC verdict” (‘Hasina to go on Trial in Warplane Purchase Case’ 2007, Boloji.com, (source: *Indo-Asian News Service*), 6 September <http://news.boloji.com/2007-2/200709/11432.htm> – Accessed 24 March 2009 – Attachment 25; ‘Hasina Faces Trial: HC rejects appeal to quash MiG case’ 2007, *Bangladesh News*, 7 September <http://www.bangladeshnews.com.bd/2007/09/07/hasina-faces-trial-hc-rejects-appeal-to-quash-mig-case/> – Accessed 13 March 2009– Attachment 1).
- **December 2007 – Anti-Corruption Commission sues Hasina, Zia and ten others in relation to gas deals**
On 10 December 2007 *Bangladesh News* reported that: “The Anti-corruption Commission (ACC) yesterday sued former prime ministers Khaleda Zia and Sheikh Hasina along with 10 others for inflicting an enormous loss to the state through awarding gas deals to Canadian gas exploration company Niko by abusing their power”. It notes the ongoing MiG-29, frigate and power station cases against Hasina. Of previous such charges against Zia the report observes: “The High Court...quashed two graft cases against Khaleda Zia field during the last AL regime in connection with Khaleda’s house decoration and an airbus purchase during one of her tenures as a prime minister” (‘Hasina, Khaleda, 10 others sued’ 2007, *Bangladesh News*, 10 December <http://www.bangladeshnews.com.bd/2007/12/10/hasina-khaleda-10-others-sued/> – Accessed 20 March 2009 – Attachment 13).
- **February 2008 – charges framed against Hasina and six others in relation to MiG-29 deal**
On 27 February 2008 *The Daily Star* reported that: “Hearing on the charge framing against detained former premier Sheikh Hasina and six others in connection with the MiG-29 corruption case will be held today”. It was also reported that: “Earlier on February 17, Judge Golam Mortuza Majumder of the Special Court for Dhaka Division fixed the hearing date”; and that: “The court directed the jail authorities to produce Hasina, now detained in a sub-jail at Sangsad Bhaban complex, on the scheduled date. The judge also served summons on the six other accused, now on bail,

to show up on the same date”. It was also reported of previous events that: “On December 11 in 2001, Inspector Abdullah Al Zahid of now-defunct Bureau of Anti-Corruption submitted charge sheet to Chief Metropolitan Magistrate’s Court of Dhaka, showing 40 persons as prosecution witnesses”; and that: “The names of Brig Gen (ret’d) **Iftekhar-Ul-Bashar** and former deputy secretary **Hasan Mahmood Delwar** were dropped from the case due to poor evidence while the former army chief Mustafizur Rahman, Air Commodore (ret’d) Mirza Akhter Maruf, former joint secretary Hossain Serniabat and businessman Nur Ali were implicated in the case after investigators found their involvement in the scam”. A *Bangladesh News* article reported on 28 February 2008 that: “The names of Brig Gen (ret’d) Iftekhar-Ul-Bashar and former deputy secretary Hasan Mahmood Delwar were dropped from the list of accused due to lack of evidence while former army chief Mustafizur Rahman, Air Commodore (ret’d) Mirza Akhter Maruf, former joint secretary Hossain Serniabat and businessman Nur Ali were indicted in the case after investigators found their involvement in the scam” (‘Charge-framing hearing on Hasina’s MiG-29 case today’ 2008, *The Daily Star*, 27 February <http://www.thedailystar.net/story.php?nid=25148> – Accessed 20 March 2009 – Attachment 14; ‘Hasina not taken to court on security grounds’ 2008, *Bangladesh News*, 22 February <http://www.bangladeshnews.com.bd/2008/02/28/hasina-not-taken-to-court-on-security-grounds> – Accessed 30 March 2009 – Attachment 26).

- **March 2008 – Supreme court turn down Hasina’s petitions against the High Court’s revival of the MiG-29 corruption case trial**

On 19 March 2008 *The Bangladesh News* reported that: “The MiG-29 purchase graft case against detained former prime minister Sheikh Hasina will resume at the trial court as the Supreme Court yesterday dismissed Hasina’s petition for appeal against a High Court order that revived the case”. It was also reported that: “A seven-member full bench of the Appellate Division, headed by Chief Justice Mohammad Ruhul Amin, gave the order that removed all barriers to resuming the trial of the case pending with Dhaka Divisional Special Judge’s Court”; and that: “The trial court fixed March 25 for appearance of all the seven accused in the case before it” (‘MiG-29 case to resume as SC rejects Hasina’s petition’ 2008, *Bangladesh News*, 19 March <http://www.bangladeshnews.com.bd/2008/03/19/mig-29-case-to-resume-as-sc-rejects-hasinas-petition/> – Accessed 20 March 2009 – Attachment 15).

- **March 2008 – charges framed against Hasina and others**

On 26 March 2008 *The Daily Star* reported that: “After getting clearance from the Supreme Court, a Dhaka court yesterday fixed April 9 for hearing on charge framing against detained former premier Sheikh Hasina and six others in connection with the MiG-29 corruption case”(‘MiG-29 case charge-framing hearing Apr 9’ 2008, *Daily Star*, 26 March <http://www.thedailystar.net/story.php?nid=29356> – Accessed 20 March 2009 – Attachment 16).

- **Mid 2008 – the prosecution submits DGFI report as evidence**

On 3 June 2008 *The Daily Star* reports that: “the public prosecutor read out the [DGFI] report to the court and said expensive MiG-29 warplanes were not a necessity for the country’s air force, since impoverished countries like Bangladesh just cannot afford the cost of maintaining those aircraft” (‘Hasina calls for halt to mass arrests’ 2008, *Daily Star*, 20 March http://www.thedailystar.net/pf_story.php?nid=39436 – Accessed 20 March 2009 – Attachment 17).

- May 2008 – Gen Mustafiz arrested and granted bail until 2 June 2008**

On 29 May 2008 *The Daily Star* reported that: “A special court yesterday granted bail to ailing former army chief Gen (retd) Mustafizur Rahman, an accused in the MiG-29 purchase graft case, until June 2”. According to the report: “Police [had] arrested Gen (retd) Mustafiz on May 25 at the hospital following an arrest warrant issued against him on May 20”; and: “Gen (retd) Mustafiz’s counsel advocate Syed Rezaur Rahman...told the court that the former army chief had been suffering from heart disease and he was brought to the court in a stretcher, as he even could not sit in a wheelchair”. It was also noted that: “The court also fixed June 2 for the next hearing on charge framing against detained former prime minister Sheikh Hasina, Gen (retd) Mustafiz and five others in the case” (‘Gen Mustafiz granted bail until June 2’ 2009, *The Daily Star*, 29 May <http://www.thedailystar.net/story.php?nid=38692> – Accessed 20 March 2009– Attachment 18).
- June 2008 – Gen Mustafiz granted permanent bail**

On 12 June 2008 *The Daily Star* reported that “A special court yesterday granted permanent bail to ailing former army chief Gen (retd) Mustafizur Rahman in the MiG-29 warplane purchase case” (‘Mustafiz gets permanent bail’ 2008, *The Daily Star*, 12 June <http://www.thedailystar.net/story.php?nid=40817> – Accessed 20 March 2009– Attachment 19).
- September 2008 – MiG-29 corruption case adjourned for three months**

On 19 September 2008 *The Daily Star* reported that: “The High Court (HC) yesterday stayed for three months trial proceedings against Awami League (AL) President Sheikh Hasina in the MiG-29 purchase scam case filed during the BNP-led four-party alliance rule” (‘MiG-29 trial stayed for 3 months’ 2008, *The Daily Star*, 19 September <http://www.thedailystar.net/story.php?nid=55514> – Accessed 20 March 2009 – Attachment 20).
- January 2009 – MiG-29 corruption case adjourned until 10 July 2009**

On 8 January 2009 *United News of Bangladesh* reports that: “Dhaka divisional special court Wednesday stayed for six months the trial proceedings of the Mig-29 graft case against Prime Minister Sheikh Hasina and five others”. It is also reported that: “Judge Golam Mortuza Majumder, responding to a time petition moved by Hasina’s lawyer Fazilatunnesa Buppy, adjourned the hearings till July 10”; and that: “The other accused-former air-force chief Air Marshal (retd) Jamal Uddin Ahmed, retired defence secretary **Syed Yusuf Hossain**, Air Commodore (retd) Mirza Akhtar Maruf, retired defence joint secretary **Mohammad Hossain Serniabat** and businessman Noor Ali, now on bail – were present at the court” (‘Mig-29 scam case: Court stays proceedings for 6 months’ 2009, *priyo.com*, source: *United News of Bangladesh*, 8 January <http://priyo.com/news/2009/01/08/18770.html> – Accessed 13 March 2009 – Attachment 2).

2. Please provide information regarding the current status of any legal action, in particular against former Ministry of Defence officials such as Syed Yusuf Hossain and Hossain Serniabat. Please provide information confirming that the charges against President Sheikh Hasina have lapsed or have been formally dropped.

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3. Do reports confirm that charges against Brigadier General (retired) Iftekhar-Ul-Bashar and former Ministry of Defence Deputy Secretary Hasan Mahmood Delwar were dropped for lack of evidence?

As is noted above, on 19 March 2008 *The Daily Star* reported that: “The names of Brig Gen (ret’d) **Iftekhar-Ul-Bashar** and former deputy secretary **Hasan Mahmood Delwar** were dropped from the case due to poor evidence while the former army chief Mustafizur Rahman, Air Commodore (ret’d) Mirza Akhter Maruf, former joint secretary Hossain Serniabat and businessman Nur Ali were implicated in the case after investigators found their involvement in the scam”. A *Bangladesh News* article reported on 28 February 2008 that: “The names of Brig Gen (ret’d) Iftekhar-Ul-Bashar and former deputy secretary Hasan Mahmood Delwar were dropped from the list of accused due to lack of evidence while former army chief Mustafizur Rahman, Air Commodore (ret’d) Mirza Akhter Maruf, former joint secretary Hossain Serniabat and businessman Nur Ali were indicted in the case after investigators found their involvement in the scam” (‘Charge-framing hearing on Hasina’s MiG-29 case today’ 2008, *The Daily Star*, 27 February <http://www.thedailystar.net/story.php?nid=25148> – Accessed 20 March 2009 – Attachment 14; ‘Hasina not taken to court on security grounds’ 2008, *Bangladesh News*, 22 February <http://www.bangladeshnews.com.bd/2008/02/28/hasina-not-taken-to-court-on-security-grounds> – Accessed 30 March 2009 – Attachment 26).

4. Please provide any other relevant information, for example the profile of the MiG-29 corruption case or public comment on its future prospects.

The Asian Centre for Human Rights (ACHR) has questioned the legitimacy of the various cases being pursued against Hasina and has, in addition, argued the these cases have been attended by legal irregularities and that the affair as a whole “has little or nothing to do with offences allegedly committed by her but more to do with silencing any opposition to the Care-taker government from the Awami League”. Extracts follow from an ACHR statement which was published in October 2007 (it should be noted that this report focuses on the

corruption accusations relating to power plant deals and does not mention the MiG-29 related accusations specifically).

Asian Centre for Human Rights (ACHR) appreciates the decision of the Inter-Parliamentary Union (IPU) to consider its request to explore the possibilities for intervention against the arrest, detention and continued imprisonment of former parliamentarian and former Prime Minister of Bangladesh, Sheikh Hasina since 16 July 2007. She is also the President of Awami League, one of the largest political parties in Bangladesh.

Asian Centre for Human Rights (ACHR) has studied all the four complaints filed so far against Sheikh Hasina by three private individuals and the Anti-Corruption Commission (ACC) of Bangladesh. A cursory reading of the cases reveals that these complaints are trumped up.

After having studied the complaints filed so far, ACHR can assert that complaints of alleged corruption, which could have been considered as alleged cases of bribery, have been turned into “extortion” cases – non-bailable offences – by the Caretaker government. In addition, three cases i.e. two complaints of extortion filed by Noor Ali and Azam J Chowdhury and one case of corruption filed by the ACC – have been brought under the Emergency Powers Rules (EPR) of 2007 in order to deny her bail indefinitely. These measures have been taken in order to prevent her from carrying out political activities which pose a formidable challenge to the Care-taker government. A Care-taker government, which has no mandate of the people, by definition, must function within the ambit of the Constitution of Bangladesh and other national laws to facilitate installation of a government with people's mandate. The Care-taker government has not only set aside the Constitution of Bangladesh but has also assumed the role of the judiciary by retroactively applying the Emergency Powers Rules of 2007 which violates the basic tenets of fair trial and rights guaranteed under the Constitution of Bangladesh and international human rights law.

Asian Centre for Human Rights appeals to the Committee

...Asian Centre for Human Rights strongly believes that the arrest of former Prime Minister Sheikh Hasina has little or nothing to do with offences allegedly committed by her but more to do with silencing any opposition to the Care-taker government from the Awami League.

Asian Centre for Human Rights shares the following concerns:

First, the arrest of Sheikh Hasina violates the cardinal principles of administration of justice – the presumption of innocence until proven guilty as provided under Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). Under the Criminal Procedure Code of Bangladesh, when complaints are filed by private individuals and not the State, the allegations made in the complaint must be first investigated by the police before making arrest, and the complainant has to mandatorily make out a prima facie case before the Court could take cognizance of an alleged crime. No such investigation was conducted before taking Sheikh Hasina into custody. The investigation started only after she was taken into custody on 16 July 2007.

Second, the complaints were filed under various sections of Bangladesh Penal Code. Be as it may, even if the allegations were true, these alleged offences should have been considered offences such as “corruption”, “abuse of official powers” etc but not “extortion”. The offence of “extortion” has been invoked to deny her bail.

Third, all the alleged offences took place prior to the Emergency Powers Rules, 2007 coming into force. Under no circumstances, a law can be applied retroactively. Moreover as provided under Section 15 of the International Covenant on Civil and Political Rights “No one shall be

held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.”

Fourth, the Emergency Powers Rules of 2007 violates internationally accepted principles on the right to fair trial and allows the government to assume the role of the judiciary. Under Section 10(2) of the Emergency Powers Rules of 2007, “offences under these Rules are cognizable, non-compoundable and non-bailable”. Section 19(D) of the Emergency Powers Rules further provides that “While the Proclamation of Emergency remains in force, notwithstanding anything contained in Sections 497 and 498 of the CrPC, 1898 or any other law, a person accused of any offence under these Rules or under any of the laws referred to in Rules 14 and 15 of the Rules, 2007, may not submit a petition for bail before any Court or Tribunal pending enquiry, investigation or trial of such offence”.

It is for the judiciary to decide whether any accused should be given bail or not. However, as stated above, in Bangladesh, the Care-taker government has assumed the role of the judiciary under the Emergency Powers Rules of 2007 and no justice can be obtained as the judiciary has been reduced to a rubber stamp (‘Unfair trial and continued imprisonment of former parliamentarian Sheikh Hasina – A case for intervention by the IPU’ 2007, Asian Centre for Human Rights website, 6 October <http://www.achrweb.org/briefingpapers/Bangladesh-BP-0107.htm> – Accessed 23 March 2009 – Attachment 22).

The independent Bangladesh human rights monitor Odhikar has also voiced concerns about certain legal irregularities in the proceedings against the Awami League’s Sheikh Hasina and the Bangladesh National Party’s Khaleda Zia. Odhikar has, additionally, argued that: “Difference in judicial determination with regard to Sheikh Hasina, seeking treatment for her ear on the one hand and the serious health condition of Arafat Rahman and Tareq Rahman, the two sons of Khaleda Zia, on the other may add fuel to the public perception since it may be interpreted as discrimination”. Extracts follow from a statement released in June 2008:

Interference in Judiciary to design certain political goals, worse even, for differential and discriminatory outcomes, has become a serious human rights threat to the people of Bangladesh and people’s perception of such apparent events have further increased political tension and instability.

The way the caretaker government has fast tracked the judicial process by getting courts issuing similar orders in a day exempting the former Prime Minister Sheikh Hasina from personal appearance and return of her seized passports to purportedly facilitating her treatments, have exposed, yet again, use of judicial process for extraneous purposes.

This preceded the simultaneous formation of medical boards and their examinations of two detained former Prime Ministers, Bangladesh Nationalist Party Chairperson Khaleda Zia and the Awami League President Sheikh Hasina. At the same time, separate medical boards, examined Khaleda Zia’s two sons. All the reports were sent to the Home Ministry in two days.

These hurried decisions have seriously undermined the judiciary and the judicial process in the people’s perception. The political pitfalls of such perceptions may diminish the expectations of an independent role played by the judiciary in time of crisis and create alienation of the people from rule of law and constitutional politics – a precondition to precipitate the serious deterioration of constitutional and human rights in general.

In fact, at the time of releasing this report, Sheikh Hasina has been released on parole for 8 weeks on medical grounds and is on her way to the United States of America. It is obvious that political calculation has overwritten both the emergency and the ordinances by which the regime is ruling the country, but most importantly the normal process of the judiciary.

Difference in judicial determination with regard to Sheikh Hasina, seeking treatment for her ear on the one hand and the serious health condition of Arafat Rahman and Tareq Rahman, the two sons of Khaleda Zia, on the other may add fuel to the public perception since it may be interpreted as discrimination (Odhikar 2008, 'Report on 17 Months of Emergency in Bangladesh', Odhikar, June http://www.odhikar.org/documents/17months_emergency.pdf – Accessed 23 March 2009 – Attachment 21).

In April 2008 the International Crisis Group published an overview of the actions of the caretaker government (referred to as the CTG) and the perception that the caretaker government was intent upon removing Hasina and Zia from the Bangladesh political landscape (referred to in reporting as the suspected “minus two” policy).

The various attempts to sideline the two leaders have been dubbed “minus two”. Some even believe the CTG aims to remove the Awami League and BNP from politics altogether. A political scientist explained: “When Yunus’s party failed, the government’s response was to expand ‘minus two’ to subtract the Awami League and BNP in their current forms from our politics”.

In April 2007 the CTG banned Sheikh Hasina, then in the US, from returning to Bangladesh on the grounds that she was a threat to national security. According to a government statement, if she returned, “she might seek to make provocative comments [and] cause further hatred and confusion among the people”. However, these heavy-handed efforts only embarrassed the government and added to international pressure. The CTG had to relent, and Hasina arrived in Dhaka on 7 May. At the same time, the government failed to pressure Hasina’s rival, Khaleda Zia, into exile in Saudi Arabia. A BNP official said she nearly struck a deal with the military in late April 2007, but eventually refused to go into exile without her youngest son, Koko Arafat Rahman. A senior government official said, “In hindsight we should have let her take Koko. We already had Tarique [Rahman] behind bars; he was a much bigger danger to society”.

Unable to force the two women into exile, the Joint Forces arrested them on corruption charges. An official said, “we gave them the easy way out, but they did not want to go. So we decided to make their lives so difficult in the courts that they wish they had gone [into exile]”. Hasina was arrested on 16 July 2007 for allegedly extorting nearly \$430,000 from a businessman, Azam J Chowdhury, in 2000-2001. Chowdhury’s company, East Coast Trading, was seeking a government contract to build a power plant outside Dhaka, while Hasina was prime minister. Hasina and her health minister and cousin, Sheikh Selim, allegedly demanded payments. On 3 September 2007, Khaleda Zia was arrested for corruption and abuse of power during her second term as prime minister (2001-2006). She allegedly took bribes to award a government contract to Global Agro Trade Company (GATCO) in March 2003 for handling shipping containers at Chittagong and Dhaka ports.

The CTG has brought both cases under the EPR. On 7 February 2008, however, the High Court ruled that Sheikh Hasina’s extortion case could not be tried under those rules because the alleged offences were committed prior to promulgation of the emergency in 2007. The ruling may impact over 150 other cases filed under the EPR, including Khaleda Zia’s. At least 50 verdicts have already been delivered in such cases, resulting in jail sentences of former government ministers, parliamentarians, bureaucrats and businessmen. Some 50 more cases are being heard and another 50 are under investigation. The CTG has appealed the ruling, with some prospect of success. According the U.S. State Department, “The Appellate

Division of the Supreme Court frequently overturned [in 2007] politically charged decisions by the High Court Division of the Supreme Court if those rulings went against the government”.

The army believes there is strong public support for putting Hasina and Zia on trial. According to a senior military intelligence officer, unpublished opinion polls conducted by the DGFI show each of the women enjoys the support of only 13-14 per cent of the population. However, Zia and Hasina are still major political personalities, and some believe their imprisonment may only make them more popular. On the streets of Dhaka and in many smaller towns and villages, they are seen as victims of a conspiracy hatched by the political elite and the military. A rice farmer in Rajshahi Division said, “the army is trying to kill Sheikh Hasina and Khaleda Zia. We don’t like the way government is treating them. Sheikh Hasina is the daughter of the Father of the Nation; how dare Fakhruddin [Ahmed] and his army treat her this way. They should be ashamed....the new politicians are just trying to take power for themselves”.

A mobile phone shop owner in Dhaka said that:

“The leaders of both parties are corrupt; there is no doubt about that. They should be tried. But Sheikh Hasina and Khaleda Zia are another matter. All the people around them were corrupt and framed them. Khaleda Zia had no idea about Tarique’s corruption, he was a bad son; he hid everything from her. He would not even give his mother a newspaper, so how would she know about all the corruption?”

(International Crisis Group 2008, *Restoring Democracy in Bangladesh*, Crisis Group Asia Report no.151, 28 April – Attachment 24).

In December 2008 the International Crisis Group argued that the caretaker had effectively abandoned the “minus two” policy.

By late 2007 the CTG realised that reforms were easier to advocate than execute. Corruption had worsened despite its anti-graft campaign, and the political parties refused to undertake reforms or go to the polls without their jailed leaders. Faced with a failing reform agenda and declining popular support, the CTG was forced to abandon its “minus two” policy of sidelining the two major political parties’ leaders, Sheikh Hasina and Khaleda Zia, and negotiate an exit strategy with the parties. Talks overcame many obstacles to elections contested by all the major parties, including the release of Sheikh Hasina and Khaleda Zia...

...The CTG’s stated goal is to hold the elections in December with “full participation by all parties and with honest candidates”. To this end the CTG has abandoned the failed “minus-two” strategy of sidelining Sheikh Hasina and Khaleda Zia. Instead it has come up with a “plus two, minus many” (International Crisis Group 2008, *Bangladesh: Elections and Beyond*, Crisis Group Asia Briefing no.84, 11 December – Attachment 23).

Nonetheless, and as is noted above under Question 1, the case of the MiG-29 corruption charges against Hasina and others are an ongoing matter and are scheduled to resume trial on 10 July 2009 (‘Mig-29 scam case: Court stays proceedings for 6 months’ 2009, *priyo.com*, source: *United News of Bangladesh*, 8 January <http://priyo.com/news/2009/01/08/18770.html> – Accessed 13 March 2009 – Attachment 2).

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