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BANGLADESH: GUARANTEE ACCESS TO HEALTH CARE AND FAIR TRIAL RIGHTS TO DETAINED FORMER PRIME MINISTER BEGUM KHALEDA ZIA

Amnesty International is deeply concerned about the health condition of detained former prime minister of Bangladesh, Begum Khaleda Zia, amid allegations that the authorities are denying her access to adequate health care. Khaleda Zia, who is now 74, has been detained since 08 February 2018 after receiving a five years prison sentence on embezzlement charges, in a case known as the Orphanage Trust case. Already suffering from poor health, her condition has deteriorated since her imprisonment. The authorities transferred her to a public hospital on 01 April 2019, where she continues to undergo treatment amid concerns that she is not being provided with adequate health care. She is facing multiple criminal charges and there have been fair trial concerns in several of the proceedings against her. Amnesty International is calling on the Bangladesh authorities to ensure that Khaleda Zia is treated in accordance with the UN Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) and that her fair trial rights are fully respected.

ACCESS TO ADEQUATE HEALTH CARE

Begum Khaleda Zia, now 74, has been suffering from chronic health conditions including arthritis and uncontrolled diabetes, according to media reports quoting a member of the government medical board overseeing her treatment.¹ Her family members have alleged negligence in her medical care and said that the government has denied them access to her medical records despite requests from Khaleda Zia.² In April 2018, citing her personal doctor,

¹ "Two weeks needed for BNP chief's full checkup", *The Daily Star*, 09 October 2018, <https://www.thedailystar.net/politics/bnp-chairperson-khaleda-zia-suffers-arthritis-diabetes-1644241>

² "'Extremely ill' Khaleda Zia admitted to Dhaka hospital", *Al Jazeera*, 06 October 2018, <https://www.aljazeera.com/news/2018/10/ill-khaleda-zia-admitted-dhaka-hospital-181006114052387.html>; See

AFP reported that “[S]he [Khaleda Zia] couldn’t walk 50 metres without assistance.”³ On 06 October 2018, after falling seriously ill⁴, Khaleda Zia was admitted into a public hospital in Dhaka.⁵ Since then she has been receiving health care in the public hospital overseen by a government medical board.

The government medical board claims that Begum Zia’s health is ‘fine’.⁶ However, these claims are contradicted by her family and personal doctors, who visited Khaleda Zia in detention several times. They have shared their concerns with Amnesty International, saying that Khaleda Zia’s request to access specialized treatment of her choosing has been denied repeatedly and the authorities are consistently refusing to share official medical reports to her family members despite Khaleda Zia’s requests.

Given Khaleda Zia’s severe arthritis problem, her personal doctors advised her specialized treatment at a private hospital where she used to undergo treatment before her detention.⁷ Her doctors believe that the public hospital in Dhaka where she is being treated does not have the capacity to provide adequate specialized care to her for her specific condition. However, despite repeated requests from Khaleda Zia and her family to the authorities, to allow her to receive specialized treatment at a private hospital as per the recommendation from her personal doctors, the government has declined.⁸ This is inconsistent with the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules, also known as Nelson Mandela Rules), which stipulates that:

“[P]risoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.” [Rule 27]

Furthermore, Khaleda Zia’s family members told Amnesty International that the government had refused to disclose her official medical reports to them. This is deeply concerning and also inconsistent with the UN Standard Minimum Rules, which provides that:

“the health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their

also “Bangladesh’s ex-PM transferred from prison to hospital”, *Associated Press*, 08 October 2018, <https://apnews.com/93a3cf09267e409b94a8be0b5b87d45e/Bangladesh-s-ex-PM-transferred-from-prison-to-hospital>; “Jailed Bangladeshi leader Khaleda Zia in poor health, arthritis worsen: Doctors”, *Hindustan Times*, 03 April, 2018, <https://www.hindustantimes.com/world-news/jailed-bangladesh-leader-khaleda-zia-in-poor-health-arthritis-worsen-doctors/story-QD64QhUhlJSwRUUpQDSbHxN.html>; “BNP: Khaleda’s health condition has deteriorated”, *Dhaka Tribune*, 10 February 2019, <https://www.dhakatribune.com/bangladesh/politics/2019/02/10/bnp-khaleda-s-health-condition-has-deteriorated>

³ “Jailed Bangladeshi leader Khaleda Zia in poor health, arthritis worsen: Doctors”, *Hindustan Times*, 03 April 2018, <https://www.hindustantimes.com/world-news/jailed-bangladesh-leader-khaleda-zia-in-poor-health-arthritis-worsen-doctors/story-QD64QhUhlJSwRUUpQDSbHxN.html>

⁴ The government is not disclosing any official medical records, thus, it is difficult to ascertain what prompted the government to shift her to the medical center.

⁵ “‘Extremely ill’ Khaleda Zia admitted to Dhaka hospital”, *Al Jazeera*, 06 October.

⁶ “Medical board: Khaleda’s health not at risk”, *Dhaka Tribune*, 28 October 2019, <https://www.dhakatribune.com/bangladesh/politics/2019/10/28/bsmmu-doctors-khaleda-health-has-improved>

⁷ “Khaleda wants to receive treatment at United, not BSMMU”, *Bdnews24*, 10 March 2019, <https://bdnews24.com/politics/2019/03/10/khaleda-wants-to-receive-treatment-at-united-not-bsmmu>

⁸ “Government to decide whether Khaleda will be treated in private hospital”, *Dhaka Tribune*, 16 June 2018, <https://www.dhakatribune.com/bangladesh/politics/2018/06/16/govt-decide-khaleda-treated-private-hospital>

files upon request. A prisoner may appoint a third party to access his or her medical file.”
[Rule 26]

Besides, according to Rule 24 of the UN Standard Minimum Rules the “provision of health care for prisoners is a State responsibility” and that prisoners “should enjoy the same standards of health care that are available in the community” and without discrimination.⁹ In addition, as a state party to the International Covenant on Economic, Social and Cultural Rights, Bangladesh is legally obliged to respect, protect and fulfil “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁰

RIGHT TO FAIR TRIAL

Begum Khaleda Zia is facing a total of 36 cases filed on various grounds: 5 corruption-related, 16 concern arson and bomb-attacks, 4 for defamation, 3 for murder, 2 concerning ‘defamatory statements’, 2 on sedition charges and 4 on other charges. Four cases were filed during the 2007-08 military-backed caretaker government and 32 cases were filed subsequently under the current administration. Some charges against her are not consistent with international law and standards – such as “hurting religious sentiments”¹¹, “making ‘defamatory statement’ on Bangabandhu Sheikh Mujibur Rahman”¹², “celebrating her [Khaleda Zia’s] ‘fake’ birthday”¹³, “undermining national flag”¹⁴, and for “commenting on the number of liberation war martyrs”¹⁵.

Khaleda Zia has secured bail in the 34 cases that have yet to proceed to the trial stage. In two further cases - the Orphanage Trust case and the Charitable Trust case – Khaleda Zia is appealing convictions at the Supreme Court. Her lawyers are seeking her release on bail pending the hearing of these two appeals.

There are concerns regarding infringements of Khaleda Zia’s right to a fair hearing. For instance, a High Court division bench granted bail in the Charitable Trust case on 12 March 2018, taking into consideration the severity of the sentence, her age and medical condition.¹⁶ However, the

⁹ UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by UN General Assembly Resolution 70/175 of 17 December 2015, E/CN.15/2015/L.6/Rev.1, Annex, Rule 24(1), available at www.penalreform.org/wpcontent/uploads/2015/05/MANDELA-RULES.pdf (the Mandela Rules, Rule 24(1)).

¹⁰ 1 International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 3 January 1976, Article 12. Iran ratified the ICESCR in 1975. See also Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, para. 33, available at www.refworld.org/docid/4538838d0.html

¹¹ “Fresh arrest warrant against Khaleda Zia”, *Asian Age*, 21 January 2019, <https://www.asianage.com/world/asia/210119/fresh-arrest-warrant-against-khaleda-zia.html>

¹² “‘Defamatory’ Speech: Court issues arrest warrant for Khaleda,” *The Daily Star*, 21 March 2019, <https://www.thedailystar.net/backpage/news/defamatory-speech-court-issues-arrest-warrant-khaleda-1718158>

¹³ “Arrest warrant against Khaleda for fake birthday celebration,” *Dhaka Tribune*, 17 November 2018, <https://www.dhakatribune.com/bangladesh/court/2016/11/17/arrest-warrant-against-khaleda-for-fake-birthday-celebration/>

¹⁴ “Undermining flag: Court issues arrest warrant for Khaleda,” *Daily Sun*, 12 October 2017, <https://www.daily-sun.com/amp/post/260967>

¹⁵ “Sedition case filed against Khaleda Zia,” *The Hindu*, 25 January 2016, <https://www.thehindu.com/news/international/Sedition-case-filed-against-Khaleda-Zia/article14019487.ece>

¹⁶ “Zia Orphanage Trust Graft Case: Khaleda gets 4 months’ bail,” *The Daily Star*, 13 March 2018, <https://www.thedailystar.net/backpage/zia-orphanage-trust-graft-case-khaleda-gets-4-months-bail-1547404>

bail order was hastily stayed by the Appellate Division of the Bangladesh Supreme Court, led by the Chief Justice, on 14 March 2018 without hearing the defendant's lawyers and by only allowing the prosecution to present their case.¹⁷ Khaleda Zia's counsel declared such a step unprecedented.¹⁸ According to international law, where a defence lawyer is excluded from a hearing where the prosecutor is present, this is in violation of the principle of "equality of arms" between the accused and the prosecution in the context of the adversarial proceedings¹⁹.

On 4 September 2018, the Law Ministry transferred criminal proceedings in the Orphanage Trust from a public courtroom to a closed facility in old Dhaka prison.²⁰ The defendant's counsel termed the decision "contrary to the Constitution" and declared it a trial in camera, indicating the lack of public access to the trial process.²¹ The Law Ministry cited security reasons for the decision.²² Subsequent proceedings took place in the prison on 5 September boycotted by Khaleda Zia's lawyers.²³ An appeal was filed on 5 September challenging the lack of a public tribunal for the accused. The appeal was rejected by the High Court.

The government decision, without the permission from Supreme Court [mandated under article 116 of Bangladeshi Constitution], to shift Khaleda's trial from the court room to Old Dhaka prison was termed by her lawyers as the "misuse of judicial powers" by the executive and they sought the chief justice's intervention into the matter.²⁴

The above features of the proceedings against Khaleda Zia raise serious concerns regarding the respect for her right to a fair and public hearing. According to Article 14(1) of ICCPR,

"Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

Amnesty International is therefore urging Bangladeshi authorities to allow Begum Khaleda Zia access to the specialized health care she requires and ensure her fair trial rights are fully respected.

¹⁷ "Top court stays Khaleda's bail till Sunday," *The Daily Star*, 26 November 2019, <https://www.thedailystar.net/frontpage/top-court-stays-khaledas-bail-till-sunday-1548406>

¹⁸ "Top court stays Khaleda's bail till Sunday," *The Daily Star*, 26 November 2019.

¹⁹ See *Situation in the DRC* (ICC-01/04-135-tEN), ICC Pre-Trial Chamber (2006) §§37-39.

²⁰ "Khaleda's Graft Trial: Court sits today in old central jail," *The Daily Star*, 05 September 2018, <https://www.thedailystar.net/news/city/zia-charitable-trust-corruption-case-khaleda-zia-trial-be-held-old-dhaka-central-jail-1629061>

²¹ "Court to hold Khaleda trial in old Dhaka jail," *The Independent*, 05 September 2018, <http://www.theindependentbd.com/arcprint/details/164936/2018-09-05>

²² "Khaleda's Graft Trial: Court sits today in old central jail," *The Daily Star*, 05 September 2018, <https://www.thedailystar.net/news/city/zia-charitable-trust-corruption-case-khaleda-zia-trial-be-held-old-dhaka-central-jail-1629061>

²³ "Punish me as much as you want", *The Daily Star*, 06 September 2018, <https://www.thedailystar.net/news/politics/khaleda-zia-tells-dhaka-special-court-punish-me-as-much-as-you-want-1629484>

²⁴ "It's 'misuse' of judicial powers," *The Daily Star*, 10 September 2018, <https://www.thedailystar.net/politics/news/probe-judicial-abuse-against-khaleda-lawyers-1631455>

BACKGROUND

The Anti-Corruption Commission during the military-backed Caretaker Government filed a charge against Khaleda Zia and five others on 03 July 2008 for embezzling over BDT 21 million (\$252,000, approx.) from foreign donations intended for a charity named after former President Ziaur Rahman (known as *Zia Orphanage Trust Case*).²⁵ The trial court “*Special Judge Court 3*” declared the charges on 19 March 2014, and the trial begun on 22 September 2014. On 08 February 2018, the court sentenced Khaleda Zia and other accused to 5 years imprisonment and sent her jail on the same day. The Anti-Corruption Commission filed an appeal against the judgement with the Supreme Court, which has doubled the sentence from 5 years to 10 years on 30 October 2018.²⁶

The *Zia Charitable Trust Case* was filed by the Anti-Corruption Commission during the current administration on 08 August 2011 against Khaleda Zia and three others for misusing power in collecting \$375,000 for the *Zia Charitable Trust Fund* from unknown sources.²⁷ The court declared charges against Khaleda and three other accused on March 19, 2014. On 29 October 2018, the trial court “*Special Judge Court 5*” sentenced Khaleda Zia and other accused to 7 years imprisonment.

Khaleda Zia has secured bails in 34 of 36 cases. The appeals against the two trial court judgements are now pending with the Appellate Division of the Supreme Court.

Khalde Zia was living in prison since 08 February 2018 until her medical conditions deteriorated in late March 2019 forcing the jail authorities to shift her to a public hospital on 01 April 2019, where she has since been undergoing treatment.

²⁵ “Khaleda Zia jailed for five years in corruption case,” *Al Jazeera*, 08 February 2018, <https://www.aljazeera.com/news/2018/02/khaleda-zia-jailed-years-corruption-case-180208083811505.html>

²⁶ “Zia Orphanage Graft Case: Khaleda’s jail term raised to 10 years,” *The Daily Star*, 31 October 2018, <https://www.thedailystar.net/politics/zia-orphanage-trust-corruption-case-verdict-high-court-enhances-khaleda-zia-punishment-10-years-1653796>

²⁷ “Bangladesh court jails ex-PM Zia for seven years for corruption,” *Al Jazeera*, 29 October 2018, <https://www.aljazeera.com/news/2018/10/bangladesh-court-jails-pm-zia-7-years-corruption-181029065602070.html>