

International Crimes Tribunal (Bangladesh)



[Old High Court Building (Dhaka) where the tribunal is taking place]

The International Crimes Tribunal (Bangladesh) (ICT of Bangladesh) is a domestic war crimes tribunal in Bangladesh set up in 2009 to investigate and prosecute suspects for the genocide committed in 1971 by the Pakistan Army and their local collaborators, Razakars, Al-Badr and Al-Shams during the Bangladesh Liberation War.^[1] During the 2008 general election, the Awami League (AL) pledged to establish the tribunals in response to long-standing calls for trying war criminals. The first indictments were issued in 2010. However, the main perpetrators of the war crimes, the Pakistan soldiers, remained out of the reach of the courts.^[2]

The government set up the tribunal after the Awami League won the general election in December 2008 with a more than two-thirds majority in parliament.^[3] The War Crimes Fact Finding Committee, tasked to investigate and find evidence, completed its report in 2008, identifying 1,600 suspects.^{[4][5]} Prior to the formation of the ICT, the United Nations Development Programme offered assistance in 2009 on the tribunal's formation.^[6] In 2009, the parliament amended the 1973 act that authorized such a tribunal to update it.^[7]

By 2012, nine leaders of Jamaat-e-Islami, the largest Islamist party in the nation, and two of the Bangladesh Nationalist Party, had been

indicted as suspects in war crimes. Three leaders of Jamaat were the first tried; each were convicted of several charges of war crimes. The first person convicted was Abul Kalam Azad (Bachchu), tried *in absentia* as he had left the country; he was sentenced to death in January 2013.

The ICT initially received some offers of international assistance. In 2009, the UN offered its expertise, expressing an interest in helping Bangladesh avoid the problems other countries faced in similar trials.^{[8][9]} The EU has passed three resolutions supporting the trials and Jean Lambert has said "she expected that the trial would conform to the highest standard possible."^[10]

However, since the beginning of the trials several human rights organisations and international legal figures have raised objections to the court proceedings.^[11] Human Rights Watch, which initially supported the establishment of the tribunal, have criticised it for issues of fairness and transparency, as well as reported harassment of lawyers and witnesses representing the accused.^{[12][13]} Bianca Karim and Tirza Theunissen have written that the international community have voiced concerns that the trial will not be transparent or impartial.^[14]

Jamaat-e-Islami supporters and their student wing, Bangladesh Islami Chhatra Shibir, called a general strike nationwide on 4 December 2012, which erupted in violence. The group demanded the tribunal be scrapped permanently and their leaders be released immediately.^{[15][16][17]}

Annual public opinion polls regularly rank the war-crimes trials ranked among the top three

"positive steps that the government has taken", though the issue is not considered among the top ten most pressing issues facing the country.^[18] Polling in 2013 by AC Nielsen found that more than two-thirds of Bangladeshis characterize the ICT as "unfair" or "very unfair", though 86% support its implementation.^[18]

In February 2013, Abdul Quader Molla, Assistant Secretary General of Jamaat, was the first person sentenced to death by the ICT who was not convicted in absentia.^[18] Initially, Molla was sentenced to life imprisonment, but demonstrations, including the 2013 Shahbag protests in Dhaka, lead to a new punishment.^[18]

ABOUT THE INTERNATIONAL CRIMES (TRIBUNALS) ACT, 1973

ICTA was enacted by the sovereign parliament of Bangladesh to provide for the detention, prosecution and punishment of persons responsible for committing genocide, crimes against humanity, war crimes and other crimes under international law . The Tribunal constituted under the Act shall have the power to try and punish any individual or group of individuals or organizations, or any member of any armed, defense or auxiliary forces irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after commencement of this Act, any crimes mentioned in sub section [2] of section 3 of the Act. Under section 6 of the Act the government may, by notification in the official gazette, set up one or more tribunals each consisting of a Chairman and not less than two and not more than four other Members.

Some significant changes have been brought in the Act, by way of amendment, in 2009 and thereafter, to come out from the culture of impunity the government , for the purpose of section 3 of the Act, by notification in official gazette has set up the 'Tribunal' on 25 March 2010. The tribunal consists of three Judges of whom one is Chairman and two are members.

On 22/3/2012 government by official gazette notification established another tribunal namely international crimes tribunal-2. Thus, presently, two tribunals established under the ICTA (1973) are in operation with the same jurisdiction mentioned in section 3 of the ICTA (1973). The ICT-1 and the ICT-2 has separate rules of procedures of its own.

The government simultaneously constituted a Prosecution team headed by a 'Chief prosecutor' under section 7 of the Act and the Investigation Agency under section 8 of the Act. The registry is composed of Registrar, Deputy Registrar and personnel. After formation of the Tribunal and its Registry, the Tribunal under the power conferred in section 22 of the Act formulated its own 'Rules of Procedure' (ROP) and it was published in gazette on 17.7.2010.

On completion of investigation, the Investigation Agency is to submit a 'Report ' to the Chief prosecutor by examine which it shall prepare a 'Formal Charge' and shall submit it together with materials, documents, statement of witness etc. before the tribunal. After taking cognizance of offences, if the allegations are prima facie found considering the materials, documents, statement of witnesses and the formal charge adequate opportunity is given to the accused to defend its own interest. At this stage, the defense is entitled to have copy of all the materials, documents, statement of witnesses, DVDs etc upon which the prosecution rely so that the same enable the accused in preparing its own defense and interest.

Tribunal, on hearing both sides and on perusal of materials, documents, statement of witnesses, DVDs may frame charge(s), if it is satisfied that there is reasonable ground to believe, prima facie, that the accused committed the offences as enumerated in the Act of 1973. After framing charge, trial commences and both sides shall have rights to adduce and examine witnesses in support of their respective cases and defense. Under

section 21(1) of the Act a person convicted of any crime specified in section 3 and sentenced by a Tribunal shall have the right to appeal to the Appellate Division of the Supreme Court of Bangladesh, the highest judicial forum of the country, against such conviction and sentence. Under section 21(2) the government or the complainant or the informant also shall have the right of appeal against an order and verdict of acquittal or an order of sentence.

The provision laid down in Section 6 (2A) that “the tribunal shall be independent in the exercise of its judicial functions and shall ensure fair trial” is quite compatible with the international standard. The degree of fairness as has been contemplated in the Act and the Rules of Procedure formulated by the Tribunal under the powers conferred in section 22 of the principal Act are to be assessed with reference to the national needs such as, the long denial of justice to the victims of the atrocities committed during 1971 independence war and the nation as a whole. It is necessary to state that the provisions of the ICTA 1973 [(International Crimes (Tribunals) Act, 1973)] and the Rules framed offer adequate compatibility with the rights of the accused enshrined under Article 14 of the ICCPR. The 1973 Act of Bangladesh has the merit and mechanism of ensuring the standard of the safeguards needed universally to be provided to the person accused of crimes against humanity. The proceedings take place in public. Journalists, observers are allowed to watch the proceedings.

The Tribunal is a domestic judicial mechanism set up under national legislation and it is meant to try internationally recognized crimes and that is why it is known as ‘International Crimes Tribunal’. Despite the fact that ours is a domestic Tribunal set up under International Crimes (Tribunal) Act, 1973, a domestic legislation, the Tribunal shall never be precluded to seek guidance from the universally recognized norms and principles laid down in international law and International

Criminal Law with a blend of national law, in trying the persons responsible for perpetration of crimes enumerated in the Act of 1973. All possible provisions ensuring adequate rights of defense have been enshrined in the ICTA and the Rules as well. The Tribunal is housed in a scenic building known as ‘old high court building’ having old heritage located inside the Bangladesh Supreme Court premises.

Currently [since 15.9.2015] only Tribunal-1 has been functioning on being reconstituted and Tribunal-2 remains non-functioning.

BACKGROUND

The events of the nine-month conflict of the Bangladesh Liberation War are widely viewed as genocide; the Pakistan Army and collaborators targeted mass people, intellectuals and members of the political opposition for attacks.^{[6][19][20][21]} Historians have estimated that, during the conflict, between two hundred thousand^[22] and four hundred thousand^[23] women and children^[24] were raped leading to an estimated 25,000 war babies being born.^[25] Estimates of persons killed during the conflict range to three million.^[26] An estimated ten million refugees entered India, a situation which contributed to its government's decision to intervene militarily in the civil war. Thirty million people were displaced.^[26] Susan Brownmiller documented that girls from the age of eight to grandmothers of seventy-five suffered rapes during the war.^[27]

In 2009 Shafique Ahmed, the Minister of Law, Justice and Parliamentary Affairs, announced that the trials would be organized under the International Crimes (Tribunal) Act 1973.^[28] This act authorizes prosecution only of persons living within Bangladesh who were members of the armed forces, including paramilitary groups. The act was amended in 2009 to update it, and the International Crimes Tribunal Rules of Procedure and Evidence were put in place by 2010. Some critics maintain that further amendments are needed

to bring the act up to the standards of international law.^[14]

FORMATION OF THE TRIBUNAL

Seeing the broad support for war crimes trials, the Awami League-led fourteen-party alliance included this in their election platform.^[29] The Four-Party Alliance, including the BNP and Jamaat-e-Islami, had several alleged war criminals among their top-ranking politicians.^[30]

The former freedom fighters and sector commanders of the liberation war pleaded with citizens against voting for the alleged war criminals.^[31] The fourteen-party alliance won the election on 29 December 2008, with an overwhelming majority, a "historic landslide".^[32] This was thought to be due to their commitment to prosecute war crimes.^{[32][33][34]} On 29 January 2009, Mahmud-us-Samad Chowdhury, a member of the parliament (MP) from the Awami League (AL), proposed taking action to establish a tribunal to prosecute war crimes during a session of the Jatiyo Sangshad. A resolution was passed unanimously calling on the government to proceed as promised in the election.^[35]

In 1973 the newly independent government of Bangladesh passed a law, the International Crimes (Tribunals) Act (ICT Act 1973), to authorize the investigation and prosecution of the persons responsible for genocide, crimes against humanity, war crimes and other crimes under international law committed in 1971. The act was a complete in itself.^[36]

On 25 March 2009 the government voted to try the war criminals according to the ICT Act of 1973^{[37][38]} but planned amendments to bring the law up to date and in keeping with international standards for similar trials. As a part of the amendment procedure, the government sent the act to the Law Commission, where it was scrutinised by specialist lawyers, judges and professors of the universities.^{[38][39]} On 9 July 2009, Parliament

amended the act as recommended by the commission.^[40]

The amendments provided that a political party that had worked against the liberation of Bangladesh could be tried on the same charges as individuals. They also authorized the government to file appeals with the Appellate Division if the tribunal ruled for acquittal for a suspect.^[40] The International Bar Association has stated that the "1973 Legislation, together with the 2009 amending text, provides a system which is broadly compatible with current international standards."^[41]

On 25 March 2010, the government announced the formation of the following: a three-member judges' tribunal, a seven-member investigation agency, and a twelve-member prosecution team to hold the trials according to the ICT Act of 1973. This landmark announcement was made on the 39th anniversary of the Operation Searchlight massacre by the Pakistan Army on 25 March 1971.^{[29][42]}

The three judges appointed were Mohammed Nizamul Huq as chairman, with A.T.M. Fazle Kabir and A.K.M. Zahir Ahmed.^[43]

Persons appointed to the investigative agency to assist state prosecutors were Abdul Matin, Abdur Rahim, Kutubur Rahman, ASM Shamsul Arefin, Mir Shahidul Islam, Nurul Islam and M. Abdur Razzak Khan.^[44]

Golam Arif Tipu was named as Chief Prosecutor. The others are Syed Rezaur Rahman, Golam Hasnayan, Rana Das Gupta, Zahirul Huq, Nurul Islam Sujana, Syed Haider Ali, Khandaker Abdul Mannan, Mosharraf Hossain Kajal, Ziad Al-Malum, Sanjida Khanom and Sultan Mahmud Semon.^[44]

INDICTMENTS

The first nearly dozen men indicted include nine leaders of Jamaat-e-Islami, the largest Islamist party in the nation and opposed to independence in 1971.^[45] Ghulam Azam, in 1971 chief of the erstwhile East Pakistan unit of the party; incumbent chief Matiur Rahman

Nizami, deputy Delwar Hossain Sayeedi, secretary general Ali Ahsan Mohammad Mojahid; assistant secretary generals Muhammaad Kamaruzzaman and Abdul Quader Molla; media doyen Mir Kashem Ali, who heads the pro-Jamaat Diganta Media Corporation; Miah Golam Parwar,^[46] and Abul Kalam Azad (Bachchu), an Islamic cleric formerly associated with the party.^[45]

Two leaders of the opposition Bangladesh National Party were also indicted: former government ministers Salahuddin Quader Chowdhury and Abdul Alim.^[45]

ACCUSED AND VERDICTS

Abul Kalam Azad (Bachchu)



Abul Kalam Azad, a nationally known Islamic cleric and former member of Jamaat, was charged with genocide, rape, abduction, confinement and torture. He was tried *in absentia* after having fled the country; the police believe he is in Pakistan.^[47] In January 2013 Azad was the first suspect to be convicted in the trials; he was found guilty of seven of eight charges and sentenced to death by hanging.^[48] Azad's defence lawyer, a prominent Supreme Court lawyer appointed by the state, did not have any witnesses in the case; he said Azad's family failed to cooperate in helping locate witnesses and refused to testify.^[49]

United Nations human rights experts expressed concern that the trial did not meet all the criteria of a fair trial and due process.^[50] Speaking for the British government, Sayeeda

Warsi said of the verdict, "The British government supports the efforts of Bangladesh to bring to justice those responsible for committing atrocities during the 1971 War, although we remain strongly opposed to the application of the death penalty in all circumstances." The French Ambassador to Bangladesh, Michel Trinquier, and the German Ambassador Albrecht Conze each said that individual nations must find their own ways to deal with past events.^[51] The US state department has said, "The United States supports bringing to justice those who commit such crimes. However, we believe that any such trials must be free, fair, and transparent, and in accordance with domestic standards and international standards Bangladesh has agreed to uphold through its ratification of international agreements, including the International Covenant on Civil and Political Rights."^[52]

Abdul Quader Mollah



On 5 February 2013, the ICT sentenced Abdul Quader Mollah, assistant secretary of Jamaat, to life imprisonment.^[53] Mollah was convicted on five of six counts of crimes against humanity and war crimes.^[54] He was accused of shooting 344 people and the rape of an 11-year-old girl.^[55] In protest of the trials which it said were politically motivated, Jamaat members called a general strike in Dhaka that erupted in violence.

Following the verdict, large-scale, non-violent protests started on 5 February 2013 in Dhaka,

with demonstrators calling for the death penalty for Mollah and any others convicted of war crimes.^[56] Tens of thousands of people filled the Shahbag intersection, with more coming in the days following.^[57] The protest spread to other parts of the country, with sit-ins and demonstrations taking place in Chittagong, Sylhet, Barisal, Mymensingh, Khulna, Rajbari, Rajshahi, Rangpur, Sunamganj, Noakhali and Narsingdi.^{[58][59]} Following these mass protests, in September 2012 the Supreme Court overturned his life sentence and imposed the death penalty.^[60]

Quader Molla was executed on 12 December 2013 at 22:01 in a Dhaka jail, the first person to be put to death for events in 1971.^[60] The JEI called it a "political killing."^[61] He was later buried in his village of Faridpur.^[62]

Delwar Hossain Sayeedi



On 28 February 2013, Delwar Hossain Sayeedi, the deputy of Jamaat, was found guilty of genocide, rape and religious persecution. He was sentenced to death by hanging.^[63] His defence lawyer had earlier complained that a witness who was supposed to testify for him was abducted from the gates of the courthouse on 5 November 2012, reportedly by police, and has not been heard from since. The government did not seem to take the issue seriously after the prosecution denied there was a problem.^[64] By afternoon on the day of the protest, violence had erupted

across Bangladesh between Islamic activists and police forces. By the end of 3 March 2013, almost 80 people were dead, including many police officers. An estimated 2000 people were injured countrywide.^{[65][66][67][68]} On 17 September 2014, the Appellate Division of the Bangladesh Supreme Court reduced sentence of Delwar Hossain Sayeedee revising the death sentence to 'imprisonment till death' for crimes against humanity in 1971.^[69]

Muhammad Kamaruzzaman

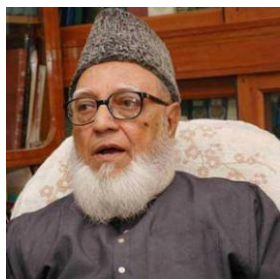


Muhammad Kamaruzzaman was indicted on 7 June 2012 on 7 counts of crimes against humanity.^[70] On 9 May 2013 he was convicted and given the death penalty on five counts of mass killings, rape, torture and kidnapping.^[71] He was hanged on 11 April 2015.^[72]

Chowdhury Mueen-Uddin



On 3 November 2013, the International Crimes Tribunal sentenced Chowdhury Mueen-Uddin to death after the tribunal found him guilty of torture and murder of 18 intellectuals during 1971 Liberation war of Bangladesh.

Ghulam Azam

Ghulam Azam was found guilty by the ICT on five counts. Incitement, conspiracy, planning, abetment and failure to prevent murder. He was sentenced on 15 July 2013 to 90 years imprisonment.^[73] He died of a stroke on 23 October 2014 at BSMMU.^[74]

Ali Ahsan Mojaheed

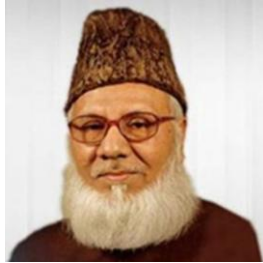
Ali Ahsan Mohammad Mojaheed was sentenced to death by hanging on 17 July 2013^[75] and hanged on 22 November 2015.

Salahuddin Quader Chowdhury

Salahuddin Quader Chowdhury was sentenced to death by hanging on 1 October 2013.^[76] and hanged on 22 November 2015.^{[77][78]}

AKM Yusuf

On 2 February 2014, Jamaat-e-Islami leader AKM Yusuf, who was also on trial for crimes against humanity, died in prison. Yusuf was alleged^[79] to be the founder of infamous Peace Committees and Razakar force in the greater Khulna region. He was indicted on 13 charges of genocide and crimes against humanity during the Liberation War in 1971.^[80]

Motiur Rahman Nizami

On 29 October 2014, Motiur Rahman Nizami was sentenced to death for war crimes committed during the 1971 independence war against Pakistan.^[81] He was hanged on 11 May 2016.^[82]

Mir Quasem Ali

On 2 November 2014, Jamaat-e-Islami politician Mir Quasem Ali was sentenced to death for crimes against humanity committed during the Liberation War of Bangladesh in 1971.^[83] He was hanged on 3 September 2016.^[84]

REACTIONS

Human Rights Watch initially supported the establishment of the tribunal and recommended amendments to the 1973 law. The government already had planned to update the law, and proceeded in consultation with experts, as noted above.^[12]

When the tribunal was being planned, Stephen Rapp, the United States Ambassador-at-Large for War Crimes Issues, said that the "US government will help Bangladesh hold an open

and transparent war crimes trial with the rights of defense for the accused."^[8] Kristine A. Huskey, writing for the NGO Crimes of War, said Rapp gave a ten-page letter to the prosecution which included recommendations and various concerns.^[105]

A Wikileaks leaked cable in November 2010 from the US State Department said, "There is little doubt that hard-line elements within the ruling party [AL] believe that the time is right to crush Jamaat and other Islamic parties."^[106]

Bangladeshi opposition political parties have demanded the release of those held, claiming the arrests are politically motivated.^[8] Shafique Ahmed, the Minister of Law and Justice, disagrees, saying, "No one is being arrested or tried on religious or political grounds."^[107]

Steven Kay, a British Queen's Counsel and criminal attorney, has been part of the defence team for Delwar Hossain Sayeedi.^[108] He had earlier criticised the authorizing legislation and 2009 amendments, saying: "The current system of war crimes trial and its law in Bangladesh does not include international concerns, required to ensure a fair, impartial and transparent trial."^[109] The ICT accused him of violating the British bar's code of conduct.^[110]

The Turkish president Abdullah Gül sent a letter to the tribunal asking that clemency be shown to those accused of war crimes.^[111] The European Parliament has passed three resolutions supporting the trials, though in at least one, it expressed its "strong opposition against the use of the death penalty in all cases and under any circumstances and its call on the Bangladesh authorities to commute all death sentences and introduce a moratorium on executions as a first step towards abolition of capital punishment."^[112] Jean Lambert welcomed the trials and said she expected them to adhere to international standards.^[10] Mizanur Rahman, chair of the National Human Rights

Commission, has said the trials do adhere to international law as the "national standards are in compliance with international standards".^[113]

Sam Zarifi of the International Commission of Jurists expressed concern that the flawed nature of trials conducted at the ICT could deepen the divisions in Bangladeshi society which resulted from the war of 1971, rather than heal them.^[114]

The United Nations Working Group on Arbitrary Detention has said that the arbitrary detention of the suspects and refusal by the government to grant bail to them violates Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights. Shafique Ahmed has responded, "It is not right to think that the accused are being detained without any reason. There are no violations of human rights in the ongoing trial of crimes against humanity, and questions of human rights violation are being raised simply to create confusion."^[115]

Some human rights advocates are concerned that the mass rapes and killings of women may not be fully addressed in the prosecutions.^[116]

Irene Khan, a Bangladeshi human rights activist, has described the government's response to abuses against women in the liberation war as the following:

A conservative Muslim society has preferred to throw a veil of negligence and denial on the issue, allowed those who committed or colluded with gender violence to thrive, and left the women victims to struggle in anonymity and shame and without much state or community support.^[116]

The Bangladeshi government has dismissed criticisms of the legal provisions and fairness of the tribunal. Shafique Ahmed, the Minister of Law and Justice, said, "There is no scope for questioning the fairness and standard of the ongoing trial for war crimes during the Liberation War in 1971."^[117]

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