



Bangladesh: the International Crimes Tribunal

Standard Note: SN06318

Last updated: 3 May 2012

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In March 2010, the Government of Bangladesh, led by Prime Minister Sheikh Hasina, re-established an International Crimes Tribunal to try people for alleged 'international crimes' (including genocide, war crimes and crimes against humanity) committed during the 1971 war of independence. The Tribunal operated during 1973-75, but by the time it was re-established, there had been no trials for 35 years.

All of the eight men so far facing trial are senior figures in the main opposition parties, Jamaat-e-Islami and the Bangladeshi National Party. Various changes have now been made to the rules of procedure of the Tribunal, but there remains considerable criticism that the Tribunal process falls short of international standards. A second Tribunal was recently constituted to share the growing workload.

This is not just a highly sensitive issue in Bangladesh. There are strong advocates for and against the Tribunal process within the UK's Bangladeshi community.

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1 What is the Tribunal?

In March 2010 the Government of Bangladesh, led by Prime Minister Sheikh Hasina, re-established the International Crimes Tribunal. It is a domestic rather than an international tribunal, originally set up under Bangladesh's 1973 *International Crimes (Tribunals) Act* to try 'international crimes' (including genocide, war crimes and crimes against humanity) committed during the 1971 war of independence.

The Tribunal came to a halt in 1975. Various changes have been made to the rules of procedure of the Tribunal by the 2009 *International Crimes (Tribunals) (Amendment) Act*. Eight men were arrested during 2010 and 2011. At least six of the men were detained for a prolonged period without being charged with a crime under the 1973 Act.¹ The first trial started in October 2011.² All of the eight men are senior figures in the main opposition parties, Jamaat-e-Islami (JI) and the Bangladeshi National Party (BNP).

In late March 2012, a second Tribunal was constituted to share the growing workload. It has begun sitting. A further amendment to the 1973 Act is currently going through parliament that would allow for cases in front of the original Tribunal to be transferred to this new Tribunal.³

The Tribunal process is not just a highly sensitive issue in Bangladesh. There are strong advocates for and against it within the UK's Bangladeshi community.

2 Historical and political context

Estimates of the number of people who died in the war of independence range from 300-500,000 to as high as three million – a figure that has been cited by the Tribunal.⁴ This is itself a hotly contested issue.⁵ A definitive figure is unlikely ever to be established. However, there is no doubt that war crimes and crimes against humanity were committed by pro-Pakistan collaborators during the war of independence.

Large numbers of people faced trial in the early 1970s, although many others benefitted from a general amnesty. Those tried were people who had allegedly supported the Pakistan army in its efforts to put down the independence movement – and push the Indian army, which had invaded in support of that movement, out of what was then East Pakistan.

The Awami League, led by Sheikh Mujibur Rahman, was the primary political force behind the independence movement. Following the surrender of the Pakistan Army in December 1971, they came to power. It was they who began the trials. However, a military coup in 1975, in which Mujibur was assassinated, abruptly terminated that judicial process. Mujibur is the father of the current leader of the Awami League and Prime Minister, Sheikh Hasina. She came to power after elections in 2008 pledging to re-start trials.

There is a wider political context to consider. The passage of time has reduced the numbers of people who are still alive to be investigated. As already stated, even at the time of the trials in the early 1970s, many were given a general amnesty. Nonetheless, the revival of the Tribunal process has deepened already considerable divisions within the Bangladeshi

¹ UN Working Group on Arbitrary Detention, [Opinion No. 66/2011 \(Bangladesh\)](#)

² ICT-BD Misc. Case No. 01 of 2011

³ "Second war crimes tribunal constituted", *Bangladesh Government News*, 23 March 2012; "[Cabinet approves draft of 'Int'l Crimes \(Tribunals\) Act 2012](#)", *UNB Connect*, 9 April 2012

⁴ [Order No. 23, 3 October 2011](#). As unofficially reproduced in the 'Bangladesh War Crimes Tribunal' blog

⁵ For example, see the discussion of this issue in the 'Bangladesh War Crimes Tribunal' [blog](#) entry of 11 November 2011

political elite. The eight people so far arrested (seven appear now now been charged, at the time of writing) are senior opposition figures. Three are from the BNP, the party of Sheikh Hasina's longstanding political rival, former Prime Minister Khaleda Zia. Five are from JI, which has often allied itself with the BNP.⁶ Both parties have rejected the legitimacy of the Tribunal.

Conflict between the Awami League and the BNP has often been played out violently on the streets of Dhaka and other towns and cities across the country, particularly as elections draw approach – and has, on several occasions in the past, led to coups or coup plots from within a military that has displayed little love for the Awami League. In January 2012, it emerged that another coup plot, led by current and former officers sympathetic to the Islamist cause and with possible links to *Hizb ut-Tahrir*, had been foiled during the previous month.⁷ Sheikh Hasina reportedly suggested that the BNP may also have been involved.⁸ However, there have been suggestions that the government deliberately exaggerated the threat in order to put its political and military opponents on the defensive.⁹ The Bangladeshi High Commissioner to India claimed that the coup attempt was in part intended to derail the Tribunal.¹⁰

Supporters of the reactivated Tribunal process argue that draining the poison of 1971 is the only way of decisively breaking this cycle. Sceptics are less sure and worry that the issue will stoke conflict in the run-up to the next parliamentary elections, which are expected to take place by the end of 2013. In recent months, the BNP and other opponents of the Awami League-led government have again taken to the streets in a sequence of 'nationwide strikes'. The political temperature is on the rise.

3 Criticism of the Tribunal

Although the re-establishment of the Tribunal was welcomed by many national and international human rights groups, there is growing criticism that it does not meet international standards in the conduct of its work.

There have been some amendments to the Tribunal's rules of procedure ahead of the resumption of trials, including:

- right to the presumption of innocence,
- right to a fair and public hearing with counsel of their choice,
- right to apply for and be granted bail.
- prohibition on convicting a person twice for the same crime
- prohibition on requiring the accused to confess guilt
- prosecution bears the burden of proving guilt beyond reasonable doubt
- creation of a victim and witness protection system.¹¹

The NGO Human Rights Watch, whilst welcoming these changes, has said that [further amendments](#) are still required. Complaints include:

- cases are not fairly selected

⁶ "Second war crimes tribunal constituted", *Bangladesh Government News*, 23 March 2012

⁷ "Dhaka conspiracy", *India Today*, 6 February 2012

⁸ "Begum's Zia party behind coup plans: Hasina", *Times of India*, 22 January 2012

⁹ "Mixed views over coup claims in Dhaka", *Straits Times*, 21 January 2012

¹⁰ "Coup plotters targeted Dhaka-Delhi relations", *Times of India*, 14 February 2012

¹¹ "[Bangladesh: Guarantee Fair Trials for Independence-Era Crimes](#)", *Human Rights Watch*, 11 July 2011

- rules of evidence are inadequate
- the process for appointing the judges has lacked independence
- elements of the appeal process have been unjustifiably restricted
- defence lawyers and witnesses are being [harassed](#) by the authorities

The main sources of international standards on criminal trials are:

- the 1966 [International Covenant on Civil and Political Rights](#);
- the statutes, procedural rules and jurisprudence of international criminal tribunals (set up since the Bangladeshi legislation was originally passed) including:
 - the [International Criminal Tribunal for the former Yugoslavia](#);
 - the [International Criminal Tribunal for Rwanda](#);
 - the [Special Court for Sierra Leone](#); and
 - the [International Criminal Court](#).

Human Rights Watch set out the specific international standards that (in its view) the Bangladeshi legislation does not meet in a [letter to the Bangladesh Prime Minister regarding the International Crimes \(Tribunals\) Act](#) (18 May 2011).

According to a press report,¹² the [War Crimes Committee of the International Bar Association](#) considers that the amended Bangladeshi legislation "provides a system that is broadly compatible with current international standards", but recommended 17 changes to it, particularly concerning the rights of individuals on trial.

The US Ambassador-at-Large for Global Criminal Justice, [Stephen Rapp](#), has visited Bangladesh three times to learn about the International Crimes Tribunal. He has made a series of recommendations "to ensure fair and transparent proceedings":

- the judges should define what "crimes against humanity" means, taking into account the statutes and cases of international courts
- the accused should have the same rights as are guaranteed to Bangladeshi citizens who are charged with other violent crimes
- a system of protection of witnesses must be developed in practice and available to both sides
- the trial sessions should be broadcast or reported by neutral observers.¹³

Six of those facing trial took a complaint to the UN Working Group on Arbitrary Detention, arguing that they had been detained for a prolonged period without being charged with a crime under the 1973 Act. In its [opinion](#) in November 2011, it upheld their complaint, stating:

The Working Group considers that holding individuals in pretrial detention in the absence of any reasoned and adequate explanation is unnecessary and disproportional to the aim sought.

The UN Working Group on detention requested that steps be taken to bring the situation of the men into conformity with the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

¹² "War crimes law 'falls short'", [bdnews24.com](#), 15 March 2010

¹³ Stephen J. Rapp, US Ambassador-at-Large for War Crimes Issues, "[Bangladesh International Crimes Tribunal: Remarks](#)", 28 November 2011

There have also been [calls](#) for the International Crimes Tribunal not to impose the death penalty, as it is empowered to do, on those that it finds guilty.

Perhaps the most active British politician on the issue to date has been [Lord Avebury](#), who has joined those expressing concern about the set-up and conduct of the International Crimes Tribunal.¹⁴

The following sources give further information about critics' concerns:

- December 2011 article in the [Justice in Conflict blog](#) about the International Crimes Tribunal
- Article by John Cammegh, a British defence lawyer involved with the Delewar Hossain Sayedee case: "[In Bangladesh: Reconciliation or Revenge?](#)", *New York Times*, 17 November 2011
- October 2011 [public statement by the defence lawyer](#), Toby Cadman, for one of the accused
- David Bergman's '[Bangladesh War Crimes Tribunal](#)' blog

4 Suspects in the UK?

Some of those who may be tried are reportedly living in the UK. The *Sunday Telegraph* reported in April 2012 that Chowdhury Mueen-Uddin, described as the "director of Muslim spiritual care provision in the NHS, a trustee of the major British charity Muslim Aid and a central figure in setting up the Muslim Council of Britain", is likely to be charged in June in connection with a series of killings of intellectuals during the war of independence.¹⁵ The report stated that Mr Mueen-Uddin denies any involvement, asserting that the claims are "politically motivated".

The *Sunday Telegraph* article said that there is no bilateral UK-Bangladesh extradition treaty. However, Bangladesh is on the list of 'part 2 countries' under the [Extradition Act 2003](#)¹⁶, as it is covered by the [London Scheme for extradition within the Commonwealth](#). This means that Bangladesh can make an extradition request to the UK authorities (the Serious Organised Crime Agency, SOCA) – but it does not necessarily mean that the UK will actually extradite.¹⁷

¹⁴ See "[Lord Avebury Confronts Law Minister Over Bangladesh War Crimes Tribunal](#)", *Nine Bedford Row International Criminal Law blog*, 28 July 2011

¹⁵ Andrew Gilligan, "[British Muslim leader faces charges of war crimes in Bangladesh](#)", *Sunday Telegraph*, 15 April 2012

¹⁶ [Extradition Act 2003 \(Designation of Part 2 Territories\) Order 2003](#), SI 2003/3334 as amended

¹⁷ See Prisoners Abroad factsheet, "[Extradition and 'International' Arrest Warrants](#)", January 2009; CPS [factsheets on extradition](#) and on [part 2 countries](#); and the [Scott Baker Review of extradition](#)