



From
The Lord Avebury
The Lord Carlile of Berriew QC CBE

June 7, 2013

Re: Trials before the International Crimes Tribunal (ICT), Bangladesh

Dear High Commissioner,

We write in relation to a particularly urgent human rights situation in Bangladesh as members of the All-Party Parliamentary Human Rights Group in the UK Parliament.

Proceedings before the ICT have troubled the international community for some time. You will be aware of critical statements by the Special Procedures, as well as the reports by a number of independent international NGOs. As the time for the first decision on appeal on conviction and sentence of death approaches, it seems vital that you should request the Bangladesh authorities for an invitation to visit by a joint delegation to visit Bangladesh as a matter of urgency with the objectives of assessing the procedures of the Tribunal and seeking access to those concerned, including the defendants in their place of incarceration.

We fully support the prosecution of the most serious crimes of international concern and the ending of impunity, but it is the duty of the State to ensure that in any judicial process established for this purpose, international criminal justice is enforced in a way that is not only complementary to national criminal jurisdictions, but also respectful of international human rights standards and international standards of procedure, fairness and transparency. Any lesser standard would negate the overall goal of securing the peace, security and wellbeing of a nation. It would fail in its central purpose of bringing a sense of justice to the numerous victims of conflict.

As early as 2012, the legislative framework of the Tribunal, namely its Statute the International Crimes Tribunal Act 1973 (ICTA) and the Rules of Procedure, were criticised for falling well short of recognised international standards. Although amendments were made to include the most basic rights for an accused person, i.e. the presumption of innocence and the independence of the judiciary, they were insufficient and provided only theoretical protection which remains illusory in practice. Throughout the proceedings, which began in 2011, the government of Bangladesh and the ICT have been subject to widespread and detailed criticism for their failure to secure the rights of the accused.

We note that a number of communications and urgent appeals have been submitted to following Special Procedures:

- a. Working Group on Arbitrary Detention (WGAD);
- b. Working Group on Enforced or Involuntary Disappearances (WGEID);
- c. Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions;

- d. Special Rapporteur on the Independence of Judges and Lawyers; and
- e. Special Rapporteur on Torture.

In response, the WGAD issued Opinion No. 66/2011 (Bangladesh) and Opinion No. 66/2012 (Bangladesh), in which it held that the cases fall in Category III of the categories applied by the Working Group. It called on the government to adhere to the standards and principles set out in the UDHR and ICCPR and to re-consider the applications for bail by the accused. In Opinion No. 66/2012 the WGAD referred to the matters contained therein as of such gravity as to warrant communication to the Special Rapporteur on Torture; a decision in that regard remains pending.

On 7 February 2013, Christof Heyns, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and Gabriela Knaul, the Special Rapporteur on the Independence of Judges and Lawyers issued a statement finding that the trial conducted in absentia against Mr Abdul Kalam Azad did not provide for all the guarantees of a fair trial and due process.¹ Mr. Heyns stressed:

“Capital punishment may be imposed only following proceedings that give all possible safeguards to ensure a fair trial and due process, at least equal to those stipulated in the ICCPR, to which Bangladesh is a State party.”

Gabriela Knaul stated:

“I am concerned by questions that have been raised about the impartiality of judges and prosecution services of the Tribunal, as well as their independence from the executive. Witnesses and lawyers for the defence have also complained about an atmosphere of hostility, intimidation and harassment. Due process requires at a minimum that defendants are able to speak freely with their counsel, have adequate time to conduct their defence, and the ability to call witnesses to speak on their behalf. The principle of equality of arms should be respected at all stages of the proceedings.”

A further statement was issued in April 2013

We note that calls for the respect of the provisions of the ICCPR have been made by a number of government and non-government representatives other than ourselves and the UK Government. These have been largely ignored, and further abuses of process have been allowed to pass unchecked. By way of example, judges have been removed and replaced by the Government in the midst of a trial without providing any time or facilities for the new judge to familiarise himself with the evidence already heard. In addition, the integrity and independence of the judges have been seriously undermined by revelations in the international media in December last year of serious judicial misconduct bordering on a criminal conspiracy to pervert the course of justice. These allegations have not been refuted, and they compromise the fairness of the proceedings before the ICT.²

We regret that the Tribunal and law enforcement agencies have failed to investigate and sanction repeated incidents of witness intimidation and, in one well-documented case, abduction. On November 5, 2012, the witness Sukhranjan Bali was abducted from the Tribunal precincts, allegedly by law enforcement officers. After months of unanswered questions, Mr Bali was found in a Kolkata jail. In a statement given whilst in detention in India, Bali has confirmed that he was ‘abducted from the court premises in a police van and

¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12972&LangID=E>

² See the article by *The Economist*, 15 December 2012: <http://www.economist.com/news/briefing/21568349-week-chairman-bangladeshs-international-crimes-tribunal-resigned-we-explain?zid=306&ah=1b164dbd43b0cb27ba0d4c3b12a5e227>

was taken to an office in Dhaka' which he stated belonged to the Detective Branch of the Bangladesh Police. This incident highlights the need to conduct an independent and impartial inquiry at the international level as it has a serious impact on the integrity of the proceedings.

Mr Bali is a Hindu. It is not in dispute that he lost at least one family member during the 1971 War of Liberation. He has no association with the Government, Jamaat-e-Islami or any other political party. He has clearly been subjected to the most horrific treatment by both the Bangladesh and Indian authorities.

A recent incident in Dhaka further reinforces the need for the Special Procedures mandate holders to conduct an immediate inquiry. On May 26, 2013, Mr Munshi Ahsan Kabir, Defence Counsel for the accused Mr Ali Ahsan Muhammad Mujahid was physically assaulted by a Prosecution Witness, namely Mr Jalal Uddin in Dhaka city. An attempt to file a complaint with the police was refused on the basis that the Commanding Officer was unavailable and the duty officer was unable to accept the complaint in his absence. There has been no action taken despite the lawyer in question suffering injury.

Recently, a planned trip by a delegation of lawyers from the House of Lords to visit the Tribunal and to have open access to everyone concerned including the defendants was indefinitely postponed due to the recent violence on the streets and the concern that the government of Bangladesh may exploit the presence of the delegates as a means of legitimising the decisions taken by the ICT, as was evidenced during the recent visit by Ambassador Rapp.

In the light of the reports by the Special Procedures and the criticisms by NGOs, the onus is now on the Human Rights Commission to assess and evaluate the proceedings before the ICT, and if the Bangladesh government fails to issue the invitation as suggested, to conduct a desk study that will bring the failures to observe judicial and procedural norms to the attention of the international community. We reiterate that with the looming threat of the death penalty being carried out imminently as the defendants lose their appeals, your immediate action is needed..

Yours sincerely
Eric Archery

Alex Corbett

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