

NATIONAL TRIAL OF INTERNATIONAL CRIMES: EVALUATING THE INTERNATIONAL CRIMES TRIBUNALS IN BANGLADESH

Sheikh Hafizur Rahman*
Farhana Helal Mehtab**

ABSTRACT

The horrific massacre of the Bengali community by the Pakistani Army and their local collaborators in 1971 can only be compared with the genocide and destruction committed in the Second World War. By enacting the International Crimes (Tribunals) Act, 1973, Bangladesh assumed jurisdiction over such massacre and other international crimes that were committed during its war for independence. The trial of genocide and crimes against humanity began in 2010 after the establishment of the International Crimes Tribunal. On 25 March 2017, the International Crimes Tribunal (ICT) has completed the seventh year of its establishment and the sixth year of the national trials of international crimes in Bangladesh. In the context of diverse discussions and criticism as to the various aspects of the prosecution of the infamous perpetrators of 1971, it appears to be imperative to make an evaluation of the national trials of the international crimes by the ICTs in Bangladesh. The article has discussed some drawbacks of the trials conducted by the ICTs, including contradiction and inconsistency in the judgments given in the cases of Abul Kalam Azad and Abdul Quader Molla; backing and publication of the conversations between the Chairman of the ICT-BD-1 and a Belgium-based international criminal law expert; and the stealing of a portion of judgment from a Tribunal's computer. The authors strongly argue that the achievements of the Bangladeshi ICTs, in spite of drawbacks and limitations, can be considered as example-setting, because the ICTs have conducted the trials with fairness; and helped Bangladesh to come out of the culture of impunity. The article has concluded that due process of law has been followed during the trial procedure; and the punishments imposed on the offenders are justified according to proportionality principle under the International Crimes (Tribunals) Act, 1973 as well as the Nuremberg and Tokyo Tribunals; and therefore ICTs-BD have meted out the demands of justice. The article found that the ICTs have contributed to the existing jurisprudence of international criminal law by interpretations and also helped promote the development of a unique appeal system.

I. INTRODUCTION

The horrific genocide that took place in 1971 in the erstwhile East Pakistan, now Bangladesh, is considered to be likely the greatest massacre after the

* **Sheikh Hafizur Rahman**, LL.B. (Hons), LL.M. (University of Dhaka), MILE (World Trade Institute, Switzerland), is an Associate Professor, Department of Law, University of Dhaka.

** **Farhana Helal Mehtab**, LL.B. (Hons), LL.M. (University of Dhaka), Master of Education, (Institute of Education and Research, University of Dhaka), is an Associate Professor and Head, Department of Law, Daffodil International University.

atrocities of the World War II. This dreadful annihilation of the Bengali community can only be compared with the mass elimination committed by the Nazis under the infamous leadership of Adolf Hitler and his associates. Setting aside the objections of the ill-famed perpetrators of the liberation war, Bangladesh assumed jurisdiction – through the enactment of the International Crimes (Tribunals) Act (ICT Act) in 1973 – over such massacre and other international crimes that were committed during the war of its liberation in 1971. The trial of genocide and crimes against humanity, which had been long due, began in 2011 after the establishment of a special national tribunal in 2010, called the International Crimes Tribunal, popularly known as the ICT-BD.

To date, human history has experienced numerous incidents of genocide, crusade, religious riot and mass-violence. To name a few, the Armenian holocaust, the Jews genocide in the World War II, the carnage during Vietnam War, the horrific genocide in Bangladesh during 1971, and many others are seemingly the mentionable ones. Around 160 million people have been massacred in the most 15 infamous incidents of genocide, a survey says.¹

Interestingly, despite so many incidents of killing and atrocity, the act of genocide was known as ‘a crime without name’ until the World War II. Raphael Lemkin, a Polish-American legal scholar, used the word ‘genocide’ for the first time in the human history to mean the indiscriminate killing of millions of people.²

The reminiscence of the World War II including millions of killing, atrocities against women, children and old people, and destruction of property shocked the world conscience in a way that the United Nations (UN) started thinking about the issue seriously and adopted the Genocide Convention in 1948 along with prosecuting German and Japanese war criminals. In 1949, International Committee of the Red Cross (ICRC) adopted four separate Geneva Conventions. In the context of cold war between the capitalist and the

¹ Fidanakis, Ioannis, “15 Worst Genocides in History”, *RantNOW*, at <http://www.rantpolitical.com/2014/12/06/15-worst-genocides-in-history/>. (Last visited on January 7, 2015).

² Lemkin public lecture to the Legal Council of the League of Nations conference on International Law in Madrid titled “The Crime of Barbarity as a Crime against International Law”, is widely recognized as the precursor of the concept of genocide, which was to become the central piece of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948. See, Casaca, Paulo, “Bangladesh: Memory and Justice”, in Hoque, Mofidul and Wara, Umme (eds.), *Bangladesh Genocide and the Issue of Justice*, Paper presented in the International Conference held at Heidelberg University, Germany, organized by Liberation War Museum of Bangladesh, South Asian Institute of Germany and South Asian Democratic Forum of Belgium, from 4-5 July 2013, at p. 29.

socialist blocs, however, the trial of the alleged war criminals and people responsible for genocide came to a halt after the 1950s, despite many holocausts including the 1971's genocide of Bangladesh.

On the face of severe criticism in the 1990s, the International Criminal Tribunal for Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established in 1993 and 1994 respectively under the supervision of the UN. The remarkable development took place in 1998 when the Rome Statute, often referred to as the ICC Statute or Rome Statute, was adopted in Italy for the establishment of the International Criminal Court (ICC) to prosecute the people responsible for the crimes against humanity, genocide, war crime, and act of aggression.

While such developments were taking place in international arena, Bangladesh established an International Crimes Tribunal and started prosecuting – after 39 years of its independence from Pakistan – the collaborators of the Pakistani armed forces who had been involved in mass killing, rape, arson and looting during the 1971 liberation war. The Government of the People's Republic of Bangladesh established a three-member International Crimes Tribunal on 25 March 2010. Another tribunal was set up on 22 March, 2012. On 15 September, 2015, the government officially merged the two tribunals into a single one in consultation with the Supreme Court.

On 25 March, 2017, the ICT-BD has completed the seventh year of its establishment and the sixth year of the trial of the crimes against humanity. Since the beginning of the trial, there have been diverse discussions, criticism and evaluation surrounding various aspects of the prosecution – fairness and impartiality of the trial; its necessity and implications after 39 years of the independence; international standards of the trial etc. At this backdrop, it appears to be imperative to make an evaluation of the trials of the crimes against humanity as to its drawbacks and achievements.

This article starts with a discussion as to whether there is any bar to conduct national trials of international crimes in Bangladesh. Then the authors have tried to inquire into the question – whether the trial is political or judicial? The article has discussed some drawbacks of the ICTs, including ICT-BD-2's inconsistency in the verdicts of the cases of *Abul Kalam Azad* and *Abdul Quader Molla*; hacking and publication of the *Skype* conversations of the Chairman of the ICT-BD-1 and a Belgium-based international criminal law expert; and the stealing of a portion of judgment from a Tribunal's computer. The authors have explained how the formation of a research team, and the establishment of a media cell, and an IT (information Technology) cell within the Registry of the ICT could help smooth prosecution. Section 5 of the article has analysed the inconsistency of the ICT-BD-2's judgments in *The Chief Prosecutor v. Moulana Abul Kalam Azad* and *The*