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## **AN INSIGHT INTO THE FUNCTIONING OF THE WAR CRIMES TRIBUNAL OF BANGLADESH**

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Dr. Samrat Datta & Mr. Aaditya Arora, Associate Professor, Seedling School of Law and Governance, Jaipur  
National University, Jaipur.

### **ABSTRACT**

Crimes against humanity, war crimes, genocide etc. are serious offences against the mankind under the international laws. Commission of such offences not only concerns a nation state where they are committed but also the international community, and none can avoid the obligation to investigate, prosecute and punish the perpetrators. The judgments of the Nuremberg Trial and the Tokyo Trial, and various treaties and conventions made thereafter and the decisions of different tribunals helped to develop the jurisprudence for investigation, prosecution and trial of such offences. The objective of such prosecution is not only to punish offenders but also to do justice by putting an end to impunity for the perpetrators and contribute to the prevention of such offences. In order to achieve such objective, what is most required is to ensure fair trial by an impartial and independent tribunal, national or international on the basis of internationally accepted standard rules of procedure and evidence. The International Crimes (Tribunals) Act, 1973 (Act XIX of 1973) was enacted for investigation, prosecution and punishment of the perpetrators of such offences in Bangladesh. The Act was unique in the sense that in Bangladesh for the first time in human history such offences were adopted in national jurisprudence and the procedure was laid down for trial of the offenders. This research paper plans to discuss and comment on the Act in the light of recent developments in international criminal law and presents the hybrid tribunals as an alternative methodology for criminalizing war crimes in Bangladesh legislation.

Key words: International Law, War Crimes, Bangladesh, Hybrid Tribunals, Functions

## Introduction

The war of independence of Bangladesh (former East Pakistan) started by the „declaration of independence given by Bangabandhu Sheikh Mujibur Rahman in the late night of 25<sup>th</sup> March 1971 which was announced by Major Ziaur Rahman on 26<sup>th</sup> March 1971 from Kalurghat Radio Station, Chittagong<sup>1</sup>. During this war of independence, Pakistan Army with the help of its locally recruited Militia Force namely Razakar, Al-Badar & Al-Shams created a horrible situation by their inhuman acts. They have killed about three million Bangladeshi people.<sup>2</sup> Finally Bangladesh got its independence from Pakistan in 16<sup>th</sup> December 1971 after a long war of nine months.<sup>3</sup>

The mass killing of Bengalis by the Pakistan Army with the help of Razakar, Al-Badar and Al-Shams was one of the massive holocausts in world’s history which was exclusively reported as genocide by different international news reports.<sup>4</sup> After the independence, the Parliament of Bangladesh enacted the International Crimes (Tribunals) Act, 1973 (hereinafter referred as ICT Act) to prosecute the persons behind this genocide, crimes against humanity, war crimes or any other crimes under international law. The importance of the ICT Act lies on the time of its enactment as it is the third in the world after Nuremberg Charter and Tokyo Charter and “unique in the sense that in Bangladesh for the first time in human history such offences were adopted in national jurisprudence and the procedure was laid down for trial of the offenders”<sup>5</sup>. Though the application of the ICT Act was inoperative for a long time because of the, internal political issues<sup>6</sup> in Bangladesh, but in 2009 the Government of Bangladesh brought some amendments in it, tribunal was set up in 2010 and started the prosecution activities in 2011.<sup>7</sup>

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<sup>1</sup> Banglapedia, *The War of Liberation*, available at [http://www.banglapedia.org/httpdocs/HT/W\\_0020.HTM](http://www.banglapedia.org/httpdocs/HT/W_0020.HTM) (Last visited on 08/2/2019).

<sup>2</sup> Banglapedia, *Genocide 1971*, available at [http://www.banglapedia.org/httpdocs/HT/G\\_0075.HTM](http://www.banglapedia.org/httpdocs/HT/G_0075.HTM) (Last visited on 08/02/2019).

<sup>3</sup> Banglapedia, *supra* note 1.

<sup>4</sup> Anthony Maskarenhas, *Genocide*, The Sunday Times (London) June 13, 1971; *see also* Simon Dring, *Revolt in Pakistan 7000 slaughtered: Homes burned*, The Daily Telegraph (London) March 30, 1971.

<sup>5</sup> Law Commission of Bangladesh, *Opinion of the Law Commission on the technical aspects of the International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973)*, June 24, 2009, pg 1, available at <http://www.lawcommissionbangladesh.org/reports/87.pdf> (Last visited on 09/02/2019).

<sup>6</sup> Assassination of Bangabandhu Sheikh Mujibur Rahman in 1975, Martial Law from 1975 to 1990, Rising of Islamic Fundamentalists.

<sup>7</sup> British Broadcasting Corporation, *Bangladesh war crimes: First charges filed*, October 03, 2011, available at <http://www.bbc.co.uk/news/world-south-asia-15147098> (Last visited on 02/02/2019)

To bring the forgotten genocide, crimes against humanity and war crimes to justice is a very good step taken by the Government of Bangladesh. But we should also keep in mind the time of enactment of the ICT Act and its application time which necessitates us to have a look at the charters of various war crimes tribunals established after 1990 by the United Nations, charter of the International Criminal Court, the recent scholarly developments in international criminal law etc. to incorporate all the ingredients in the ICT Act as per the standard of 21<sup>st</sup> century and proceed the trials as per the recognized international standard.

### **The Functions of the Tribunal**

Fair trial before a competent, independent and impartial tribunal is recognized as a human right under International Law.<sup>8</sup> This means the qualification of the judges must be as such that they have the competence to try the cases judiciously, the appointment of the judges be done by a body of recognized experts which will be independent in its decision making and there should not be any kind of biasness of the judges which can jeopardize the fairness of the trial by convicting the offenders without sufficient proof. The provision relating to the composition & appointment of judges of the tribunal in the ICT Act has the loopholes to be partial as the Government holds the sole power to appoint judges<sup>9</sup>, the qualification of the judges is not at par with the recognized international standard<sup>11</sup> which are almost similar to the provisions<sup>12</sup> of the International Military Tribunal Nuremberg of 1945 (IMT Nuremberg) and International Military Tribunal for the Far East of 1946 (IMT Tokyo). IMT Nuremberg and IMT Tokyo was the symbol of justice imposed by the winners but relevant for that time only. But now the developments of international criminal law by the establishment of tribunals by United Nations in the former Yugoslavia and Rwanda in 1990s and the establishment of International Criminal Court in 2002 set up a standard which is internationally recognized, just and fair and should not be overruled while national governments are trying genocide, war crimes, crimes against humanity etc. Judges shall be “independent of the Government in the performance of their duties and functions”<sup>10</sup> and shall work for full time and shall not engage in any other profession,

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<sup>8</sup> International Covenant of Civil and Political Right, Article 14, available at <http://www2.ohchr.org/english/law/ccpr.htm> (Last visited on 19/02/2019)

<sup>9</sup> International Crimes Tribunal Act, 1973, § 6(1): “...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.”, § 6(4): “If any member of a Tribunal dies or is, due to illness or any other reason, unable to continue to

<sup>10</sup> Opinion, *supra* note 5, pg 3-4.

occupation, business or employment which can raise question about their impartiality and fairness.<sup>11</sup>

### **Defence Office**

In a country like Bangladesh, it is difficult to find competent lawyers to defend the cases of genocide, war crimes, crimes against humanity etc. In a criminal trial „equality of arms“ must be protected and there should be a “defence office” under the ICT Act. The Special Court of Sierra Leone has a separate Defence Office under the Registry and it acts independently for the interest of justice.<sup>12</sup> The Criminal Defence Section of the Registry of the War Crimes Chamber of Bosnia is another example which is providing support to the accused persons in the form of supporting the defence counsel, providing legal and administrative aid to the accused, defending cases in the Court, providing training for the junior lawyers in defence strategy etc.<sup>13</sup>

### **Language of the Tribunal**

In a country like Bangladesh where Bangla is the national language then there is no need to keep English as the only language of proceedings before the tribunal.<sup>14</sup> The proceedings before the tribunal should be done primarily in Bangla and English can be used where the accused or the counsels do not have competence in Bangla with the leave of the tribunal.

### **Witness and Victim Protection**

In any criminal proceeding the protection of witness and victim is one of the primary concerns of the State. In a criminal proceeding like the ICT Act, the tribunal must take appropriate measure for the protection of the witness and victims which will not be limited to camera trial.<sup>15</sup>

<sup>11</sup> Rome Statute, Article 40, *supra* note 12.

<sup>12</sup> Special Court for Sierra Leone, available at <http://www.scsl.org/ABOUT/CourtOrganization/TheRegistry/tabid/79/Default.aspx> (last visited on 18/02/2019)

<sup>13</sup> War Crimes Chamber of Bosnia, available at <http://www.registarbih.gov.ba/index.php?opcija=sadrzaji&id=7&kat=2&jezik=e> (Last visited on 11/02/2015) <sup>26</sup> Act, § 10: “(2) All proceedings before the Tribunal shall be in English. (3) Any accused person or witness who is unable to express himself in, or does not understand, English may be provided the assistance of an interpreter”; *supra* note 9.

<sup>14</sup> Opinion, *supra* note 5, pg 5.

<sup>15</sup> ICTY Charter, Article 22: “The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity”; ICTR Charter, Article 21: “The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity”, *supra* note 12.

On the other hand the State should take appropriate measure for the protection of safety, well-being, dignity and privacy of the victims and witnesses.<sup>16</sup> A Victim and Witness Protection Office may be established under the Office of the Prosecutor to advise him on appropriate protective measures, security arrangements, counselling and assistance necessary for the victims and witnesses.<sup>17</sup>

### **International Criminal Law & The Tribunal**

After the cold war era, International Criminal Law has developed through multiple forums. The formations of International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) demonstrated a consensus among international community that impunity is unacceptable. At the same time provisions like compensation and security arrangements for the victims, abolition of death penalty for the most heinous crime and improved measures for the protection of the rights of the accused encompassed previously ignored human rights measures into these UN measures. Though these tribunals were limited in scope in terms of specific conflicts, they paved the way for a permanent international criminal court. The International Criminal Court (ICC) came into force 1 July 2002 as an independent organization after being ratified by 60 countries. The United Nations and all 120 state parties have participated in drafting this document and there is little doubt that this is the most advanced and timely framework for any international criminal tribunals set up to address the worst criminal acts against mankind. In recent times, war crimes tribunals taking place within the UN framework or strictly within local jurisdictions have followed the ICC standards in most instances.<sup>18</sup> Consistent with the modern trend, a choice had to be made in relation to whether Bangladesh should decide to deal with her war criminals in an international forum, a hybrid one or in a purely domestic setting. International criminal tribunals have come under criticism for excessive emphasis on the international nature of the

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<sup>16</sup> Rome Statute, Article 68: “1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender... and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children... during the investigation and prosecution of such crimes....”, *supra* note 12.

<sup>17</sup> *Id.*, Rome Statute, Article 46: “6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence”.

<sup>18</sup> The Special Court of Sierra Leone, Iraqi Special Tribunal and Cambodia tribunals for example.

crimes committed, lengthy procedure and skyrocketing expenses. In case of Bangladesh, the issue could have been one posed beautifully by Frederic Megret, *“Is there not a risk that an international trial will partly ignore ... “majority interest” that a certain society has in an episode of historical and often traumatic suffering.”*<sup>19</sup>

Many scholars have argued in favor of Hybrid tribunals that incorporate both international and domestic elements of international criminal justice.<sup>20</sup> However, The Bangladesh case at present seems to lack international character since she is only pursuing trials of local collaborators of Pakistani war criminals without going after the leading perpetrators of a different nation and ethnicity. Considering the existing scenarios, a domestic tribunal as proposed by the IWCT Act offers promise of meaningful justice for the crimes committed during the liberation war of Bangladesh in 1971. This promise, however, is far from reality at the current form of the tribunal framework.

The IWCT Act, 1973 came into force 20th July of 1973 shortly after being enacted by the then Government of Bangladesh. Little public knowledge exists about the drafting phase of the Act. It never gained momentum as general amnesty was offered to all involved in wrongdoings during the impendence war. After a long disappearance from public eye, this Act reemerged in 2009 after a democratic election brought into power the party that claims to be the leader of the independence movement. With minimal amendments and inclusion of norms that developed in the interim 36 years, the Government is about to begin trials of individuals responsible for war crimes and crimes against humanity in 1971. The law proposed, except for few ancillary provisions adopted from international humanitarian and human rights law – is predominantly domestic law of Bangladesh without any hint of international law.

The IWCT Act has jurisdiction over *„any person irrespective of his nationality who, being a member of any armed, defence or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act.....”*<sup>21</sup> This provision

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<sup>19</sup> “Forum for International Criminal and Humanitarian Law”  
[https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CC0QFjAC&url=http%3A%2F%2Fwww.fichl.org%2Ffileadmin%2Ffichl%2Fdocuments%2FFICHL\\_7\\_Web.pdf&ei=ITLnVPa7\\_GY6xuQS25ILgDQ&usq=AFQjCNGGvVhYm4JZySd5IViUo3PqHu723Q&bvm=bv.86475890,d.c2E\\_\\_last](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CC0QFjAC&url=http%3A%2F%2Fwww.fichl.org%2Ffileadmin%2Ffichl%2Fdocuments%2FFICHL_7_Web.pdf&ei=ITLnVPa7_GY6xuQS25ILgDQ&usq=AFQjCNGGvVhYm4JZySd5IViUo3PqHu723Q&bvm=bv.86475890,d.c2E__last)  
 visited on Feb 20, 2019.

<sup>20</sup> For a detailed discussion of Kosovo, East Timor, and Sierra Leone hybrid criminal tribunals see Dickinson, Laura, *The Promise of Hybrid Courts*, 97 AM. J. INT’L L. 295, 2003.

<sup>21</sup> Article 3(1) of the ICT Act 1973.

signals a distinct departure from the international trend of setting up tribunals for war crimes committed during a specific time against a nation.<sup>22</sup> On one side this can be a deterrent for political forces inside the country to go after ethnic groups with specific malice,<sup>23</sup> on the other it may become a tool for political aggression among rival forces in the country.<sup>24</sup>

The Tribunal holds each person liable for a crime committed jointly by many<sup>25</sup> and does not grant immunity for official positions.<sup>26</sup> Few rights guaranteed to accused found in different war crimes tribunal charters are available in this tribunal as well: right to a public trial,<sup>27</sup> right to an interpreter for assisting with English proceedings,<sup>28</sup> right to a defence counsel through the Govt, right to present evidence as defence and cross examine witnesses<sup>29</sup> etc.

The Tribunal is required to write a reasoned opinion for its decision<sup>30</sup> and there is a right to appeal to the Appellate Division of the Supreme Court of Bangladesh within sixty days of the verdict.<sup>31</sup>

### **Shortcomings of the Framework**

The Tribunal set up under the IWCT Act has jurisdiction over crimes against humanity, crimes against peace, genocide, war crimes, violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949, any other crimes under international law, attempt, abetment or conspiracy to commit any such crimes and complicity in or failure to

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<sup>22</sup> With the exception of ICC, the recent development international criminal law includes Tribunals set up to address violent crimes of the past in Iraq, Cambodia, Sierra Leone, Yugoslavia and Rwanda among others.

<sup>23</sup> As an example, the attack on the Hindu minority groups after 2001 election by elected Bangladesh Nationalist Party members or ongoing systematic violence against tribal people in the Chittagong Hill Tracts could theoretically be prosecuted under this Act.

<sup>24</sup> Bangladesh has suffered from military dictatorship for over 20 years in its 39 years“ of existence. Each military takeover either preceded or followed by aggression towards democratic forces in the country. The latest in this trend was the military takeover of the country veiled by civil society intervention in 2007 after which leaders of most significant political parties faced imprisonment and persecution. The ICT Act can be misinterpreted by any such undemocratic force in Bangladesh resulting in irreparable damage to her democratic politics.

<sup>25</sup> Article 4(1) of ICT Act.

<sup>26</sup> Article 5 of the ICT Act.

<sup>27</sup> Article 10 (4) of the ICT Act.

<sup>28</sup> Article 10 (3) of the ICT Act.

<sup>29</sup> Article 17 (3) of the ICT Act.

<sup>30</sup> Article 20 (1) of the ICT Act.

<sup>31</sup> Article 21 of the ICT Act.

prevent commission of any such crimes.<sup>32</sup>The definitions of each of these crimes leave a lot for the imagination and do not include latest versions available in the ICC. The most striking example of these is the definition of crimes against humanity which do not include sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity that are specifically mentioned in the ICC treaty. Bangladesh has never dealt with dignity with its rape victims and the popular course is to talk about them in the abstract without having to address their issues. Any war crimes trial that leaves out punishment for committing or abetting sexual violence against Bangladeshi women will not meet the threshold for justice people long for.

The Act makes it possible for „any person who is or is qualified to be a judge of the Supreme Court of Bangladesh or has been a judge of any High Court or Supreme Court which at any time was in existence in the territory of Bangladesh or who is qualified to be a member of General Court Martial under any service law of Bangladesh“ to be appointed as a chairman or member of a Tribunal. It is nowhere mentioned in the Act that the judges must act independently and not merely at the direction of the Government. Historically, Supreme Court Judges have been appointed by the Government from among the sympathizer of the political party in power. The guarantee that the Tribunal can act free of influence from the Government is missing from this piece of legislation. Even more worrisome is the fact that the Act bars any challenges to the constitution or appointment of members thereof both by the prosecution and by the accused or their counsel.<sup>33</sup> Even an order, judgment or sentence can be called into question in any legal forum existent in the country.

The investigation provisions are problematic. The right to remain silent is nonexistent and right to have an attorney present during investigation is not included in the Act. Remaining silent is punishable by six months at the most or with punitive punishment.

Perhaps the most troublesome area of this Act is the evidentiary rules. The Act states outright that it *“shall not be bound by technical rules of evidence”*, lean towards expeditious and non-technical procedure and *„may include any evidence, including reports and photographs*

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<sup>32</sup> Article 3 of the ICT

Act.

<sup>33</sup> Article 6 (8) of the Act states, *“Neither the constitution of a Tribunal nor the appointment of its Chairman or members shall be challenged by the prosecution or by the accused persons or their counsel”*. <sup>49</sup> Article 24 of the ICT Act.



*published in newspapers, periodicals and magazines, films and tape recordings and other materials as may be tendered before it, which it deems to have probative value”.*<sup>49</sup> Whatever protection to the accused is available under the existing domestic laws have been made inapplicable in any proceedings under this Act.

The Tribunal is empowered to award death sentences upon conviction.<sup>34</sup> International community has moved away from death penalty and likewise the ICC provides for “imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the individual”.<sup>35</sup> Bangladesh has regularly used death penalty since its birth and continues to prescribe and execute the capital punishment for terrorism, drug dealing and violence against women related crimes. In 2009, 185 convicted persons were sentenced to death and 5 men were executed.<sup>36</sup> <sup>37</sup>Unfortunately there seems to be unanimous support for death penalty among the political parties in Bangladesh. Opposition to death penalty rises only from a few sources<sup>54</sup> and do not offer any active campaign to end death penalty in Bangladesh. With many of its provisions adopted from international legislation like the ICC, the Iraqi Tribunal was still criticized for its retention and execution of the death penalty.<sup>38</sup> Any international evaluation of Bangladeshi trial of war criminals is likely to suffer from the same point of view.

### **The Omissions**

The present IWCT Act not only falls short in adopting updated versions of definitions and procedures as developed in international criminal law over the last decade, but also fails in including important aspects of similar Tribunals. This Act does not reiterate the basic norms of criminal law as maintained in the ICC such as „exclusion of jurisdiction over persons under the age of eighteen“;<sup>39</sup> „presence of mental element“;<sup>40</sup> „grounds for excluding criminal

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<sup>34</sup> Article 8 (5) and 8 (7) of the Act.

<sup>35</sup> Article 23 of the Act provides, „The Provisions of the Criminal Procedure Code, 1898 (V of 1898), and the Evidence Code, 1872 (I of 1872), shall not apply in any proceedings under this Act.

<sup>36</sup> Article 20 (2) of the ICT Act.

<sup>37</sup> countries in the world have abolished death penalty and only a handful of countries maintain this cruel punishment.

<sup>38</sup> Article 77 of the ICC Statute available at <http://www.un.org/law/icc/index.html> last visited on Feb 20, 2015.

<sup>39</sup> Article 26 of the ICC.

<sup>40</sup> Article 30 of the ICC.

responsibility<sup>41</sup> etc. The Act omits the presumption of innocence for the accused,<sup>42</sup> protection of the victims and witnesses and their participation in the proceedings<sup>43</sup> and reparation to victims. Perhaps the most alarming omission is with regards to safeguard against torture and inhuman treatment for the accused. Bangladesh has a disturbing record of custody death<sup>44</sup> and ill treatment imprisonment, the absence of special protection for the accused under this Act is likely to have a negative effect on the legitimacy of the trial. Other than the name and mentioning of the crimes under Geneva Convention, the Act has kept international influence distant from this Tribunal. Though trying crimes under international law, the judges or any other personnel are not required to have special training on international criminal law. There are no opportunities for consulting with experts in the area of war crimes Tribunals or otherwise.

### **The Way Forward**

Bangladesh is moving towards an important milestone in its history. Holding the perpetrators liable for their heinous roles in her independence movement will not only heal wounds of the nation, but also inspire the new generation to foster a society where the rule of law is respected. However, the loopholes within the framework of reaching that goal demand attention before the Tribunal begins its trials.

First, the shortcomings of the provisions regarding definition of crimes, selection of judges, evidentiary rules, and death sentence must be revisited and revised according to the ICC standard.

Second, the omitted provisions regarding compensation for the victims, protection of victims and witnesses, exclusion of jurisdiction over minors, safeguard against torture and inhuman treatment and consulting with international experts must be considered and added in the present Act.

Last but not the least; a conversation must begin as to whether a Truth and Reconciliation commission is more likely to address the grievances of Bangladeshi people after 39 years of

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<sup>41</sup> Article 31 of the ICC.

<sup>42</sup> Article 66 of the ICC.

<sup>43</sup> Article 68 of the ICC.

<sup>44</sup> In its 2008 Annual Human Rights Report, Ain o Salish Kendra published that in 2008 there were 72 deaths in police custody and information was unavailable about the deaths. The Annual report is available at [http://www.askbd.org/web/?page\\_id=430](http://www.askbd.org/web/?page_id=430) last visited on Feb 20, 2019.

the war than a criminal Tribunal.<sup>45</sup> In its current form, the war crimes Tribunal will have legitimacy concern in the international community. At the same time, a truth commission could provide the most accurate record of the atrocities that took place during the nine-month long war allowing victims and relatives to tell their stories as a way to deal with the past.

Bangladesh has won over military dictatorships many times over after the independence laying a strong foundation of democracy. It has overcome financial hurdles as well as natural calamities with determination. When it comes to the rule of law, however, Bangladesh cannot claim to be on the right path. British period laws, legalized discrimination against minorities, extrajudicial killings by government forces and a malfunctioning judicial system together with widespread corruption has tainted its reputation in the international community. A domestic war crimes Tribunal without any expertise from relevant international sources will only attract criticism rather than giving her the much-deserved credit.

## Conclusion

These developments in Bangladesh represent some of the classic dilemmas in dealing with long legacies of impunity and the complexity of crafting effective national solutions. While there is political will from the Bangladeshi government as well as genuine support from some sections of

Bangladeshi civil society to see justice for past crimes, the process remains controversial in Bangladesh and highly politically charged. The International Crimes Tribunal is faced with a historic opportunity to bring truth and justice to victims, who have been fighting for these ideals for the past four decades. However, real concerns about the fairness and independence of the process cannot be brushed aside as political rhetoric. At the same time, critiques of the process should not provide cover for ongoing impunity and denial of the rights of victims to an effective remedy for crimes against humanity and genocide. Official willingness to revise the ICTA framework to learn from international experiences, accompanied by broad-based public debate

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<sup>45</sup> There is a growing trend in the international community in accepting the importance of Truth and Reconciliation mechanisms in the aftermath of a violent conflict. As it serves the dual purpose of documenting accurate record of past atrocities and help the affected community heal their wounds, Truth commissions in El Salvador and Chile have received positive reviews. For more on Truth Commissions, see [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1451515](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1451515) last visited on Feb 20, 2019.

about a range of accountability options, would go a long way toward addressing these concerns and meeting popular hopes for

justice.<sup>46</sup>

To better address the right of Bangladesh to prosecute offenders of crimes, choice of hybrid tribunals can be a plausible one. Hybrid tribunals are a better way of addressing questions of legitimacy that have plagued the government's intention to institute tribunals and prosecute the offenders after forty years of their alleged commission. The choice of either the domestic tribunal or an international tribunal misses one important dimension of international criminality. "If the goal of international trials were simply to prosecute individuals successfully then that would not particularly be a problem. But I have tried to argue that the real goal of international criminal justice, apart from sending people to jail, is to make a more symbolic case about the nature and existence of society that gave rise to the norms."<sup>47</sup>

If correctly implemented, mixed panels can indeed contain a promise in the areas of legitimacy, capacity and norm penetration. Hybrid courts have been presented as combining the best and avoiding the worst of international and domestic justice, particularly as regards legitimacy, capacity and norm penetration. They are more likely to be perceived as legitimate by local and international population. Secondly, they play a significant role in capacity building within the domestic judicial institutions and systems. Of more importance here the role that they play in the local community, along with the necessary interaction-both formal and informal-among local and international legal actors may contribute to the broader dissemination (and adaptation) of the norms and processes of international human rights law.

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<sup>46</sup>file:///C:/Documents%20and%20Settings/kiit/Desktop/ICTJ-BGD-NationalTribunal-Briefing-2010-English.pdf last visited on Feb 20,2019.

<sup>47</sup> Megret, Frederic (2005), In Defense of Hybridity: Towards a Representational Theory of International Criminal Justice, Cornell International Law Journal, Vol.38.