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Bangladesh: Resist pressure to push for hasty death sentences at war crimes Tribunal

Amnesty International is concerned that the government of Bangladesh may use new amendments to the International Crimes (Tribunals) Act 1973 (ICT Act) to push for hasty death sentences to be imposed on individuals convicted by Bangladesh's International Crimes Tribunal (ICT). The amendments, passed by Parliament on 17 February, permit the prosecution to appeal against any decision of the ICT to impose a lesser sentence.

The ICT is a national court established in 2010 to try people suspected of crimes under international law, including genocide, war crimes and crimes against humanity, committed during Bangladesh's 1971 war of independence. The ICT Act governs the conduct of trials before the ICT.

After opening its first trial in November 2011, the ICT delivered its first verdict – *in absentia* - on 21 January 2013. Abul Kalam Azad, associated with the opposition religious party Jamaat-e-Islami, was convicted of crimes against humanity and sentenced to death.

On 5 February, the ICT delivered its second judgment and sentenced Abdul Quader Molla, a senior member of the same opposition party, to life imprisonment for crimes against humanity.

Following that second verdict, members of the ruling Awami League government claimed that the sentence was not enough and that a death sentence should have been handed down. At the same time, a large-scale protest movement has erupted in Dhaka, demanding the death sentence for Abdul Quader Molla and any others convicted of crimes under international law by the ICT. The protests continue, with tens of thousands of people camping around the *Shahbagh* intersection in Dhaka, from where the protest has gained its name.

Amnesty International notes that the protesters have been peacefully exercising their right to freedom of expression. However, with respect to their call for the death penalty, Amnesty International reiterates that it opposes the death penalty in all cases without exception regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

The government has not sought to counter calls for the death penalty. Regrettably, certain officials have even encouraged these calls.

Given the background of protests against the life sentence on Abdul Quader Molla and public demands from the *Shahbagh* rallies for the death penalty, Amnesty International is deeply concerned that the government will use the new amendments to appeal for death sentences in any cases where the ICT has imposed lesser sentences.

There are indications that the government is already planning to do this. On 19 February, Quamrul Islam, State Minister for Law, reportedly said that the prosecution intends to appeal the recent judgment against Abdul Quader Molla.

Such a move would counter the trend set by the International Criminal Court and all other international criminal courts established since 1993, which have excluded the death penalty as a sentence for the most horrific crimes: crimes against humanity, genocide and war crimes.

The Government of Bangladesh must not bow to public pressure to use the amendments to the ICT Act to press for increased use of the death penalty, or for sentences of imprisonment to be revised to sentences of death.

A verdict in the case of another senior member of Jamaat-e-Islami, Delwar Hossain Sayedi, is expected any day. Seven other individuals, all leading members of Jamaat-e-Islami together with another two who belong to the opposition Bangladesh Nationalist Party, are currently on or awaiting trial before the ICT.

Background

Amnesty International viewed the establishment of the ICT in Bangladesh as a historic opportunity with the potential to end more than 40 years of impunity for the mass-scale crimes under international law and other human rights violations that were committed by members of Pakistani and Indian armed forces, as well as by members of all armed groups, during the country's 1971 war of independence.

Bangladesh has a responsibility to the entire international community to ensure justice for more than one million civilians who were reportedly killed by Pakistani forces and their allied groups, tens of thousands of women who were allegedly subjected to rape and other crimes of sexual violence, and more than eight million people who fled the country into India in search of safety.

Amnesty International has noted that all those detained so far in connection with these crimes are members of two opposition parties – the Jamaat-e-Islami and the Bangladesh Nationalist Party. This has created the impression that the ICT is choosing to deal only with suspected perpetrators who are members of the current opposition. However, it cannot be automatically assumed that individuals responsible for these crimes do not belong to other parties.

Even if there is no bias in the ICT's proceedings, the ICT must avoid any appearance of such bias. As articulated in the leading common law case, *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233), subsequently reiterated by the House of Lords in 1998 in the *Pinochet* case, it is a fundamental principle of law that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

It is therefore crucial that a more rigorous search is conducted to ensure that no suspects are able to shield themselves from prosecution simply by being members of the ruling party or its allies.

No person suspected of crimes under international law during the 1971 war of independence, whether committed against people who supported the independence of Bangladesh or those who opposed it, should be immune from prosecution, regardless of what party they supported or what political affiliation they had at the time.